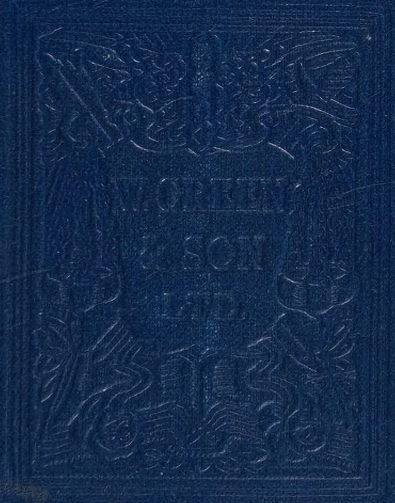
THE ECONOMIC STUDIES OF A LAWYER



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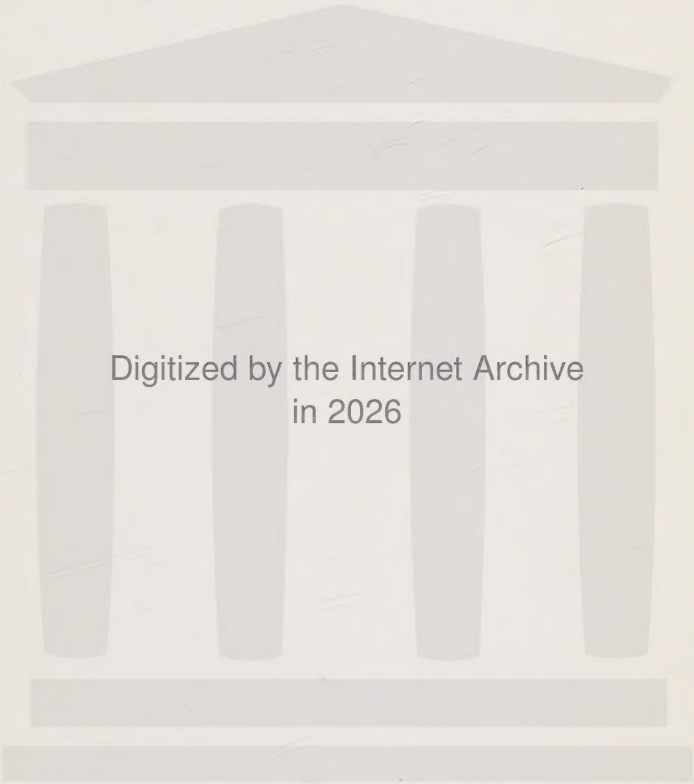
TO MY MOTHER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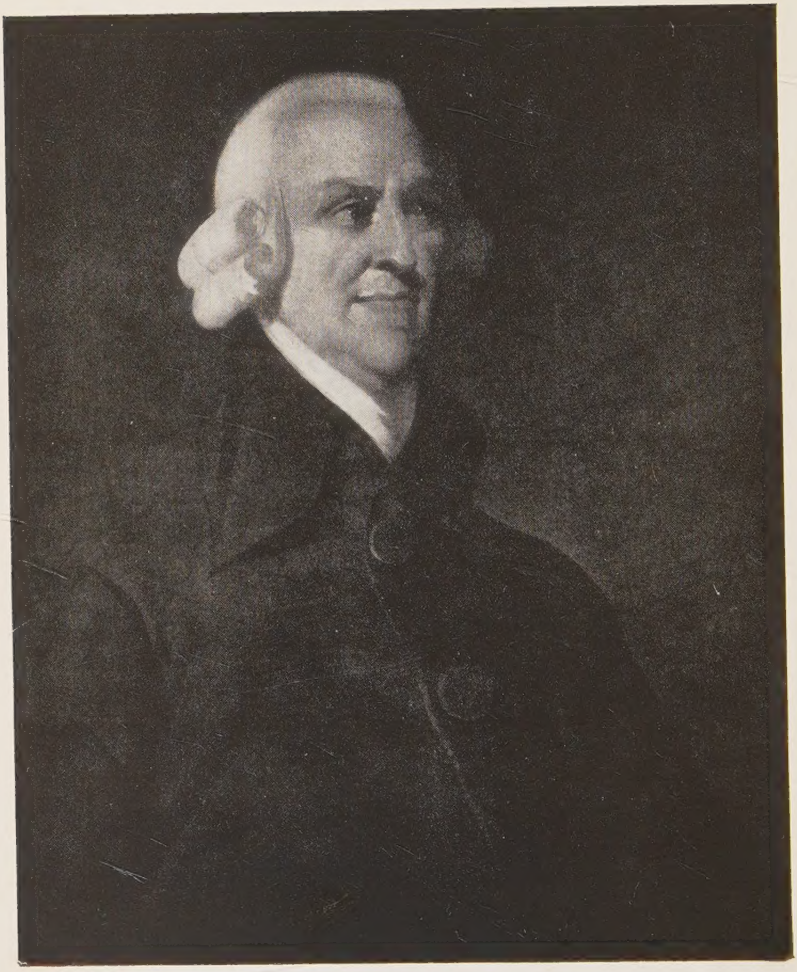

ADAM SMITH

(From an oil painting in the possession of the Author)

THE ECONOMIC STUDIES OF A LAWYER

BY

JOHN H. ROMANES, W.S.,
Edinburgh

6089

"Dass wir uns in ihr zerstreuen
Darum ist die Welt so gross."
GOETHE.

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FOREWORD

It seemed desirable that in bringing together the leisure-time studies which form Chapters II. to XII. of the following pages, some explanation should be offered of their origin. Such will be found in Chapter I.

I desire to thank the publishers of the *Scotsman*, the *Juridical Review*, the *English Historical Review*, the *Scottish Historical Review*, and the *Fifeshire Advertiser*, for kind permission to reprint articles which have appeared in these journals.

J. H. R.

8 Mortonhall Road,
Edinburgh,
1st December 1930.

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THE ECONOMIC STUDIES OF A LAWYER

CHAPTER I

I RATHER drifted into the law. It had become a sort of hereditary job in our family. To go no further back, my grandfather, after whom I was called, was Town Clerk of Lauder, in Berwickshire. His two elder sons became solicitors. My father (James) was a Chartered Accountant, and his youngest brother was a Civil Engineer with strong scientific leanings. Perhaps a scientific strain had crept in somewhere, for my Uncle John (the second of the four sons) was interested in astronomy. On the only occasion on which I ever spoke to Lord Kelvin, he asked me if I was related to George John Romanes, who was a friend of Darwin and founded the Romanes lectures at Oxford. In point of fact I was, though distantly, for he also was one of the Lauder Romaneses. That conversation had an amusing sequel, for, being rather proud of my meeting with Lord Kelvin, I was telling my father's coachman of it when the man surprised me by saying, " Oh, I have often had a chat with Lord Kelvin." It appeared that he had previously been engaged at the neighbouring property of Broadmeadows, in the Yarrow Valley, at which Lord Kelvin sometimes visited, and he had driven him about. My mother is a daughter of the late Rev. Henry Hyslop, for forty-six years minister of the John Street United Presbyterian Congregation, in Montrose. Both he and my grandmother were natives of Dumfriesshire. I was born in Edinburgh, but when I was seven my parents went to reside at Eskbank, near Dalkeith.

If I had any natural bias towards scientific studies, it

was developed when I went to that great democratic institution and school of schools—George Watson's College. I entered it when I was eleven, and during the six years I was a pupil there, travelled by train from Eskbank. This made the Sports Ground at Myreside somewhat distant for me. During my first session I was found deficient in Latin, and with some others was put in a special class for tuition in it. The teacher was Mr A. R. Anderson, M.A., who must be well known to hundreds of Watsonians all over the world. In my second session I was placed in his class in the "Sections," No. 26. The "Sections" formed the classes before the branching off of the two sides of the school, "Classical" and "Commercial." In the "Sections" you had only the one master; when you entered the higher classes you had a master for each subject. I thought myself very fortunate in being allotted to Mr Anderson, for I had taken a liking to him. He had had some scientific training, and I well remember (though he has forgotten) when one day he said that he thought that boys knew too little about natural phenomena, and that he proposed to devote some time weekly to talks on such topics. The first subject chosen was, "Why a Balloon Rises."

Later, I had instruction in Chemistry, not only of a theoretical kind but also including practical work in the laboratory. We worked in couples, and my chum was A. F. Watson, who eventually became chief chemist to Messrs Guinness in Dublin.

Though I remained throughout backward in Latin, I showed aptitude in Mathematics. My most successful session was my last. I was then in the second highest class on the classical side. I left the school with three first prizes, and they indicate pretty well my natural bent. They were for Mathematics, from Mr A. G. Barclay, M.A.; for Mechanics, from Mr John Alison, M.A. (afterwards Dr Alison, Headmaster of the College); and for Essay Writing, from Mr W. L. Carrie, M.A. My *tour de force* in Mr Carrie's class was an essay on "The Composite Nature of the English Language." The previous summer I had been with my father in the Western States of America, and I managed to drag the "mighty Columbia" into the composite nature of

the English language. But never mind, Mr Carrie made me read the production to the class, and more than forty years afterwards an old schoolmate, Dr Lechmere Taylor, the well-known Church of Scotland missionary, referred to the essay, though he had to ask me what it was about !

On leaving school, I went for two years to Lauder to gain business experience under my Uncle Robert, the Town Clerk of that Royal Burgh. I lived in lodgings in the town, but was frequently out at his house, " Harryburn," on the outskirts, which had been built by my grandfather. From him and from my aunt and cousins I received much kindness. He taught me billiards, though Herbert Spencer would not have found in my game evidence of a wasted youth. I had, however, a good deal of time on my hands, and in my first winter went up for and passed the General Knowledge Examination under the Law Agents Act. My second year in Lauder was passed in the service of the Bank of Scotland, for which my uncle was Local Agent.

In 1889 I began a W.S. apprenticeship in Edinburgh with the late Mr Charles Morton, W.S. Mr Morton, who had been Crown Agent, was now in advanced years, and though a clerk went out daily to his house, I never saw him in the office. The apprenticeship was for five years, during four of which I would have to attend law classes at the University. This gave me the first session free so far as academic work was concerned, and I decided to take the late Professor Campbell Fraser's class of Logic and Metaphysics. I had a thought of trying for the degree of Bachelor of Law, and I had to attend one Arts class and pass in four Arts subjects in connection with it.

After three years, my indenture of apprenticeship was transferred to my Uncle John's partner, Mr C. S. Rankine Simson, W.S. His brother was Professor John Rankine (afterwards Sir John Rankine) of the Scots Law Chair. Mr Simson's surname was derived from his uncle, to whose estate of Threepwood, in Berwickshire, he had succeeded. The Rankines were related to us, and to Professor Rankine I was " Johnnie " to the end of his days. While with Mr Simson I took the law degree at which I had aimed. By this time I had attended the classes of Civil Law, Scots Law

and Conveyancing ; but for the purposes of the W.S. Society I had to attend one of the two latter for a second time. I chose for this purpose the Scots Law class, but having had class " honours " the first time, I decided only to do what was necessary for the required certificate, and to give my more serious attention to Professor Nicholson's class on Political Economy, which I was also attending this last winter of my apprenticeship, having, as a former pupil of George Watson's, received one of the free passes to the class which the Edinburgh Merchant Company had at their disposal. As Professor Rankine lectured at nine in the morning and Professor Nicholson at five in the afternoon, these hours interfered little with my office work. When a class examination came on in the Scots Law class, following the principle of division and economy of labour on which I had decided, I only wrote enough to insure that my paper would count as an attendance. It was returned to me by the genial Professor with the word " Ichabod " written at the end !

Perhaps, even thus early, I was not altogether satisfied with the law as a sphere of thought and action. Its rules had not the universality of the principles of natural science, and possibly I inclined to a study of wider human interest. Professor Nicholson's class gave me an opportunity for this. In view of my great obligations to Professor Nicholson, I hope that I will not be misunderstood when I confess that at first his lectures rather perplexed me. I had got into my head (what at that time was, I fancy, a current notion) that Political Economy had mainly to do with teaching of a negative order, and then, when I learned better, I found myself somewhat overwhelmed with the range and complexity of the subject.

In spite of the " Ichabod," I passed as a Writer to the Signet at the end of October 1894, and having now had seven years of office experience, I decided to make a break and have something of a " wanderjahr " before taking up office work again. Two days after passing, my eldest sister and I left for Berlin. We spent a night at Hanover on the way. I well remember coming into the hotel dining-room ; one of these leaflets which the German Press is wont to issue on special occasions was lying on the table, and contained the

words, "Der Czar von Russland ist gestorben." It was the death of Alexander III.

I passed in between the statues of the Humboldts, to the elder of whom the University of Berlin owed its existence, and enrolled myself as a student. The lectures I attended were mainly those of the eminent economist, Professor Adolf Wagner, afterwards Rector of the University, but I also attended lectures on International Law. Of course, I could not at first make much of these lectures, but they provided me with instruction in the language if nothing else. Through Professor Rankine I had an introduction to the Rector of the University, Professor Otto Pfleiderer, who shortly before had been Gifford lecturer in Edinburgh. He not only showed my sister and me kindness in having us out to his house at Lichterfelde, but in his turn passed me on to Professor Wagner, whose lectures I was attending; and we had other introductions of a social nature. The winter was the severe winter of 1894-95, and there was plenty of skating. My German perhaps progressed more satisfactorily than the law and economics.

Bailie James Pollard, Convener of the Public Health Committee of the Edinburgh Town Council, had made a special study of the civic administration of Berlin, and described it in "A Study in Municipal Government." Through him I was introduced to one of his friends of the Berlin Municipality, and this resulted in my being given an opportunity of learning at first hand something of the organisation of the city. In special I remember that I and an American friend were taken as the guests of the Corporation, and with one of their officials in attendance, to visit one of the "Rieselfelder" of the Corporation. There the drainage of the town was being used to reclaim a stretch of sandy ground, and at the headquarters of the Corporation's agricultural and irrigating operations a convalescent home was situated. The institution of such homes was maintained by the Corporation on purely economical grounds, but (as I wrote at the time) the whole picture was so pleasing that I did not like to remind myself that it was due purely to such a motive. The fresh country air—it was an ideal day—the small village, the quiet farmyard appearance of the head-

quarters, the order, brightness, sunniness, and tidiness of everything made one unwilling to think that the benefits the inmates of the home were receiving were due to anything less than the greatest of the Christian virtues, and that the benefactor was a hard-headed and economical Corporation which proverbially had no soul.

My American friend on this occasion was Ernest Ludlow Bogart, whose acquaintance I had made at Professor Wagner's class. With him I have maintained a correspondence ever since these Berlin days. He is now one of the leading economists in his own country and author of "The Economic History of the United States," which, on its first appearance, I reviewed in the pages of the *Accountants' Magazine*.

The following Summer Semester, I went to Munich, where I heard the lectures of Professor Lujo Brentano on the "Industrial Revolution in England," and was a member of his seminar, which brought me into some personal contact with him.

The time had now come for me to make a move professionally. My uncle, the Edinburgh S.S.C., did not suggest my return to his office. Perhaps he did not altogether approve of the "wanderjahr" about which he had (perhaps thoughtlessly) not been consulted. So I decided to start on my own account, and took the necessary business premises. This gave me further time for the economic studies in which I was now much interested, and during that winter (1895-96) I attended Professor Nicholson's class over again. About this time I wrote and published in a modest way one or two articles. One in the *Scots Magazine* had to do with German student life, and the *Perthshire Advertiser* printed some notes I had made on the German Constitution and German political parties. Before long, however, I was to have the encouragement of seeing myself in print in a more important journal.

In the course of 1896 Professor Brentano wrote to Professor Nicholson, asking him if he could procure for him a copy of a small volume, published in 1826, on the "Inexpediency of the Scottish Entail Law." Professor Nicholson told me of the request, and I undertook to see if I could get what was wanted. This I had little difficulty in doing, and

in handing the volume to Professor Nicholson, I gave him at the same time a note of the progress of entail legislation since 1826, in case it should be of any use to the German Professor. I found the information in the book interesting, and the idea occurred to me of writing an account of the course of entails in Scotland. I did so, and my father showed it to the late Mr William Drummond, S.S.C., who was Law Agent for the *Scotsman*. The result was that the article appeared in an early issue of that paper, and from it was reprinted in the *Scots Law Times*.[1]

It was in the autumn of this year that I spoke to Professor Nicholson about getting together a Society in Edinburgh for the discussion of economic questions. He quite approved, and authorised me to mention that approval to any whom I might approach on the subject. In order to ventilate the matter, I wrote a short pamphlet, "A Plea for an Edinburgh Association for Economics and Finance." This brought me in touch with a number of those who were likely to assist. The Society was formally constituted at a meeting held in my office in June 1897, and Professor Nicholson gave the Inaugural Address the following autumn.

There was an interesting sequel to the little pamphlet. By this time I had learned that law and economics were to some extent interrelated, and in the "Plea" had made an appeal for the recognition of the importance of the subject by my professional brethren. Not long thereafter a striking article appeared in the *Juridical Review* on "Law and the Study of Law," from the pen of the Honourable Oliver Wendell Holmes, a son of "the autocrat." It was a discourse pronounced at the dedication of the New Hall of the Boston University School of Law on 8th January 1897. In it the distinguished jurist (who later became Chief Justice of Massachusetts and ultimately a member of the Supreme Court of the United States) pled for a more rational basis for legal rules than simply tradition. Some recent Massachusetts case, which he cited, led to the remark that it was revolting to have no better reason for a rule of law than that it was so laid down in the time of Henry IV., and still more revolting if its original *raison d'être* had long since

[1] See p. 21.

disappeared. " For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics," and high among the unrealities he placed the recommendation to study the Roman Law.

This sounds strange to Scottish ears, but the importance attached by the writer to the subject of economics in connection with the law appealed to me, and I ventured to communicate my pamphlet to him. I had a kind letter in reply, conveying his hearty sympathy in my aim. Later he procured for me a commission to administer oaths to be used in the Commonwealth of Massachusetts.

The following years were very much taken up with professional work. But the Society to which I acted as Honorary Secretary continued its activities, and that kept me to some extent in touch with economic questions. In the second session I contributed a paper on " Betterment and Municipal Improvements." The *Accountants' Magazine* occasionally sent me an economic book for review. The first was Dr J. N. Keynes's " Scope and Method of Political Economy."

In 1905 the opportunity arose for my learning something of the working of another economic society. In that year the German Verein für Sozial-Politik met at Mannheim, and I decided to attend its meeting. I wrote a report of my visit, which I showed to Professor Nicholson and Mr William C. Smith, K.C. The suggestion was made that the *Scotsman* might find a use for it. I called on Sir John Ritchie Findlay (who was a member of our Society) and showed him my MS. The next morning he returned it to me, promising that if I would shorten it somewhat, he would see if the Editor could use it. It appeared very soon thereafter.[1]

Trade Unionism was at this time becoming a burning political question. Naturally, I was interested in the subject, and offered a paper to the Society dealing with the proposed alterations in the law. It was read in the autumn of 1906, after the General Election had put the Liberals in power and while the Trade Disputes Bill was before Parliament. A few days before the paper was due to be read, I had a

[1] See p. 26.

message from the *Scotsman* asking if I would let them see my MS. I was therefore prepared for their taking some notice of it, but not for the lengthy report with which they favoured me, accompanied as it was by a leading article in which the paper was referred to. Nothing could have been more encouraging than what was said. In spite of the anonymity of the press, I believe I know who the writer of the article was, and I can assure him I was grateful to him. The paper is much too long for use in the present volume, but I have obtained the necessary permission to reprint the *Scotsman* report.[1] My searchings into the subject of Labour legislation had directed my attention to the truck system, and about this time the Editor of the *Juridical Review* accepted an article from me on "The Truck Acts."[2]

In the course of my economic studies I had learned that the burgess system at Lauder had attracted much attention as an interesting survival of primitive arrangements; but the published accounts given of it did not seem to me satisfactory. Of course, I knew something of the system, having been, as already explained, in the office of my uncle, the Town Clerk. Moreover, he had left notes on the subject which had been privately printed. I prepared an account of the system, making due acknowledgment to my uncle's notes, and offered it to the Editor of the *English Historical Review*.[3] Rather to my surprise, he accepted it. The *Scotsman* published a summary, which in its turn was copied by the *Border Magazine* and other Border papers.

Having been thus successful with one historical paper, I tried my hand at another. The interspersed acre system of land tenure, so graphically described by Dr Seebohm in his "English Village Community," and its disappearance under the progress of enclosure, form large chapters in the economic history of England, as indeed of many other countries. Consequently, when a document came into my hands in a professional connection, which described how in a particular instance such interspersed acres had been dealt with under the old Scots Act providing for their redistribution, I was greatly interested, and I put down

[1] See p. 32.
[2] See p. 42 and the supplementary note of p. 54.
[3] See p. 57.

what the document disclosed in a short article which was published in the *Scottish Historical Review*.[1] The tenure is known in Scotland as "runrig," and the article was followed by notes contributed to the review by Sir Herbert Maxwell and Mr A. W. Johnston upon the origin of that word. It would seem to be possibly derived from the Gaelic, "roinn-ruith."

At one of the early meetings of the Economic Society the late Mr W. Walker Stephens introduced himself to me. He was the author of a life of the French economist and statesman, A. R. J. Turgot, a book which I subsequently purchased. It had as a frontispiece a reproduction of the portrait of Turgot on a medal struck at the instance of the Political Economy Society of Paris, in joint honour of Adam Smith and of Turgot, in 1876—the centenary of the publication of Smith's "Wealth of Nations," and of Turgot's celebrated "Liberté du Travail Édits." In 1919 I was asked to go to Kirkcaldy and give an address there on the occasion of the unveiling of a memorial tablet at Adam Smith's birthplace. I chose as my subject, "The Broad-mindedness of Adam Smith's Teaching." [2] In referring to the friends who had influenced Smith, I included Turgot. It also seemed of interest to mention that in 1876 a medal in joint honour of Smith and Turgot had been struck in Paris. This greatly interested Mr J. Y. Lockhart, of Kirkcaldy, through whom the invitation to me to give the address had been conveyed. He was then engaged in forming a collection of relics of Adam Smith for the Kirkcaldy Museum, and was anxious to add a specimen of the medal to them; but after considerable inquiry no specimen could be obtained. It was then decided to approach the French Society on the subject. Apparently, even they had no available specimens, but it was learned that the mould from which the medal had been struck was still in existence, and was lying at the French Mint. When the Society was informed that Kirkcaldy—Smith's native town—wished to have a specimen of the medal, they had one specially struck for the purpose, and presented it to the Burgh. Mr Lockhart was delighted.

[1] See p. 64.
[2] See the opening pages of Professor Nicholson's "A Project of Empire."

He called on me, and wishing to make as much as possible of this act of international courtesy, asked me to prepare an article on the subject. I did so, and the *Scotsman* published it over my initials, under the title of "A Franco-Scottish Economic Medal." [1]

But that was not all. Some one, presumably Mr Lockhart, had naturally sent a copy of the *Scotsman* to the French Society. In a short time I had a letter sent down to me from the newspaper office. It was addressed, "J. H. R., care of the *Scotsman*," and came from France. It was a letter from the President of the Paris Society, the well-known publicist and ex-Minister of State, M. Yves Guyot, thanking me for the article. This was the beginning of what to me was a most interesting correspondence with M. Guyot. He sent me a good many of his publications, and of one of these—his scheme for harmonising the interests of capital and labour—I gave an account to the Edinburgh Society. Another gratifying circumstance was that I had an official letter from the French Society inviting me to submit my name for corresponding membership, to which I was duly elected. Twice I have attended their meetings. The first time was on the occasion of the first visit of the Franco-Scottish Society to Paris after the war. I then wrote an account of the French Society which appeared in the *Scotsman*.[2] The second time I travelled from Edinburgh to Paris solely to hear M. Yves Guyot give an address, only to learn when I reached the place of meeting that through indisposition he could not fulfil his engagement.

I had not forgotten my Trade Union studies, and this new connection facilitated my learning something of how these difficult questions had been dealt with in France. With what material I had I put together an article on the subject which appeared in the *Juridical Review*.[3]

The final paper in this volume on "The Edinburgh Home of Adam Smith" [4] was the result of inquiries occasioned by a request for information on the subject, which Professor Nicholson received from Professor Miyajima of Kansai University, Japan, and to which, being in in-

[1] See p. 69. [2] See p. 72. [3] See p. 77. [4] See p. 87.

different health at the time, Professor Nicholson asked me to reply. So both the first and the last of these papers had a similar origin, though they are separated by an interval of thirty years.

In conclusion, the writer would like to be permitted to repeat the appeal which he made so long ago for the recognition of the importance to members of his profession of the subject of economics. The truth of this proposition seems to him to be becoming more and more apparent with the years. And for it he claims high authority, for did not the author of the Boston address, already referred to, declare: "Every lawyer ought to seek an understanding of economics. The present divorce between the schools of political economy and law seems to me an evidence of how much progress in philosophical study still remains to be made."

CHAPTER II

ENTAILS IN SCOTLAND

Scotsman, 25th April 1896

A Bill brought into the House of Commons on 14th February of this year, and backed by influential names—the Succession (Scotland) Bill—seeks to assimilate the rules of succession to heritable and moveable (real and personal) estate in Scotland. By one of its provisions it seeks to enact that, "from and after the passing of this Act, it shall not be lawful to the possessor of any heritable estate in Scotland to create any entail of such estate, or to make any settlement thereof by deed which would have been invalid or ineffectual, according to the law and practice of Scotland, had the subject of such deed been moveable estate in Scotland." That is to say, if this becomes law, it will be impossible for a proprietor to put any restrictions upon the rights of full ownership of any one who thereafter succeeds to his property who is not in existence at the date when the deed disposing of it comes into operation.

It must be admitted that the present proposal is but a logical outcome of much that has gone before. Entails, practically speaking, have for some time been abolished in Scotland. There has been little encouragement in late years for entails to be entered into, for disentailing has been rendered possible, especially in the case of one taking the property who has, in the case of entails existing at the date of the first disentailing statute of 1848, been born after 1848; and in the case of subsequent entails, who has been born after the date of the entail. Such a successor can cut himself free of its fetters at his own hand.

The facilities given for disentailing, beginning in 1848,

have not only been largely made use of, but have discouraged almost entirely the entering into of new entails. For one entail which now enters the record of entails, there are six disentails. Those entails which are entered into are almost invariably in fulfilment of, and to carry out provisions in, old deeds of settlement.

The proposal to place the last sod upon the grave of an institution which has in the past played so conspicuous a part in the legal system of Scotland, provides a text for taking a brief retrospect of one or two of the main features of its history.

Scottish entails are a product of the seventeenth century. They originated in the disturbances of that century. As we are told by Laing, in his "History of Scotland," the Scottish nobility of that century, fearful of the extent to which estates were being forfeited by attainders, "relying secretly on the maxim that nothing more could be forfeited than the person attainted was entitled to alienate, passed an Act by which lands might be entailed to perpetuity, and the rights of an endless series of heirs be reduced almost to an usufructuary interest during their lives. Under the pretext of securing their estates from alienation or debts, the nobility undoubtedly expected to preserve their families, in the event of an attainder, from the forfeiture of more than the liferent interest or escheat of an heir."

The Act thus passed was—or rather is, for it remains unrepealed—the famous Entail Statute of 1685, with which, as its author, the name of the then King's Advocate, Sir George Mackenzie ("the bloody Mackenzie"), is connected. The Act is brief and to the point, and its last clause bears out what is told us by Laing as to the origin of the statute.

Prior to this Act, the question whether entails were valid or not was a moot one, and there seems to have been little confidence in entering into them. They are generally referred to as the creature of this statute. We may define an entail in popular language as a regulation by a proprietor of heritable property of the order of succession to that property, which regulation, being protected in the way pointed out by the statute, cannot be interfered with by any subsequent proprietor.

Owing, doubtless, to the distrust felt previous to the statute as to their efficacy, few entails were entered into prior to it. Twenty-four such were subsequently recorded in the register appointed by the statute. In the twenty years immediately following 1685, it appears from the record that eighty-six entails had been executed.

For almost one hundred years this statute remained untouched, though from the first it never wanted those who condemned it. Of the progress of entails during that period much information is to be found in a small volume by Patrick Irvine, W.S., published in 1826, entitled "Considerations on the Inexpediency of the Law of Entail in Scotland." When he wrote, he came to the conclusion that "about one-half of the territorial property of the kingdom is now, or will very soon be, under the fetters of entail, and the proprietors subjected to all the inconveniences attending their restricted rights of property." In 1825 1,591 entails were upon the record of entails.

Towards the end of the eighteenth century, much feeling seems to have been excited against the policy that thus allowed land to be put *extra commercium*. In 1764 the subject was taken up by the Faculty of Advocates, and the heads of a proposed Bill will be found in the *Scots Magazine* for April 1765. The immortal Adam Smith, too, writing at that time, hurled his anathemas against the policy. After declaring against the right of primogeniture—a right which, he says, "in order to enrich one beggars all the rest of the children" (this right of primogeniture in regard to heritable property is also sought to be abolished by the Succession (Scotland) Bill)—he goes on to speak of entails. "In the present state of Europe," he says, "when small as well as great estates derive their security from the laws of their country, nothing can be more absurd. They are founded upon the most absurd of all suppositions—the supposition that every successive generation of men have not an equal right to the earth, and to all that it possesses; but that the property of the present generation should be restrained and regulated according to the fancy of those who died perhaps five hundred years ago." Further on, speaking of the law which protects lessees against all successors to heritable property,

he says: "Its beneficial influence, however, has been much obstructed by entails, the heirs of entail being generally restrained from letting leases for any long term of years, frequently for more than one year. A late Act of Parliament has, in this respect, somewhat slackened their fetters, though they are still by much too strait."

To this Act referred to by Adam Smith, which was the first that detracted from the Act of 1685, a moment's attention may be devoted. It was passed in 1770, and was of the nature of a compromise, resulting from the action of the Faculty of Advocates already referred to. It professes to be "for encouraging the improvement of lands in Scotland held under settlements of strict entail."

It gave facilities for agricultural leases, and encouraged heirs of entail to improve their estates; but one of its provisions illustrates so well the evils of entails that it may be referred to more fully. The provision is that of the second section: "Proprietors of entailed estates may grant building leases for any number of years not exceeding ninety-nine, provided that a lease of no more than five acres be granted to one person, and that the lease contain a condition that it shall be void if one dwelling-house at least, not under the value of £10, be not built on each half-acre within ten years from the date of the lease, and if all the houses be not kept in tenantable repair." This provision has been very extensively made use of. Many of the leases are now falling out, and the question is, on what terms are they to be renewed? It might seem the fair thing to renew them on the same terms as those on which they were granted (though even here it may be noted that the value of the money rent which is expressed in them has changed considerably in a hundred years), but in those cases where the landlord is still an heir of entail, he has to act not only for himself, but as a trustee, as it were, for his successors, and therefore is only entitled to renew them at the highest rent he can exact. This for a piece of ground with a house on it will be very much more than what the vacant piece of ground was granted for ninety-nine years ago. The problem seems a difficult one, and it is one of immediate interest.

To follow in detail the various successors of the Act of

1770 would be a legal rather than a popular study. The first Act which gave facilities for disentailing was that of 1848, and between 1770 and that date there were various statutes granting powers to heirs of entail. Of these, as perhaps the most important, we may mention that known as the "Aberdeen Act" of 1824. It dealt with the granting by heirs of entail of provisions to wives or husbands and children. Since the first disentailing statute of 1848, the abolition of restriction has been rapid. Where an heir of entail cannot disentail at his own hand, but requires consents, even these cannot now be refused. At least, they may be dispensed with by the Court on the value of the interests of those who should grant them being ascertained and paid or made a burden on the estate. Further, so little are entailed lands now in reality *extra commercium* that the fetters cannot be pleaded against a creditor of an heir of entail, even though his debt be not connected with the estate in any way. He can put the machinery of the statutes in operation for his own benefit.

CHAPTER III

A GERMAN SOCIETY OF ECONOMISTS

Scotsman, 7th October 1905

THERE is, perhaps, no feature which strikes one more forcibly in making some acquaintance with German public life than the extent to which questions of domestic policy dominate in the political arena. In Britain the political atmosphere is surcharged with questions which carry the attention far beyond the narrow limits of our own shores; but in Germany it is not so. The questions to which publicists there have turned their attention since the epoch-making days of 1870-71 have to a larger extent than with us been questions affecting the economic interests of the community. Quite an exceptional regard has in consequence been paid to the views of those versed in economics; and they in turn have had quite an exceptional influence in shaping the legislative policy of the Government. Through no organisation have the economists been better able to promulgate their views and influence public opinion than through the Verein für Sozial-Politik.

Its inauguration followed closely upon the re-creation of the German Empire. In October 1872 a number of men of varying political and social creeds came together in Eisenach for the purpose of considering "the social question." They chose as their leader Professor Schmoller, of Berlin, to whom through all the subsequent years the Association has been much indebted, and who is still a leader in the organisation. Since then there has been, one may make bold to say, no question of economic importance in Germany which has not been reflected in its proceedings. The general method of procedure is to refer questions or phases of

questions to individuals well fitted to examine them. The results of these inquiries are published, and their value considered and their consequences discussed at the annual congresses at which politicians, economists, leaders of industry, representatives of working men, and others take part in oratorical strife. No better means of reaching truth on public questions could be desired; and the influence of the proceedings of the Association upon the social legislation and development of Germany has without doubt been very great indeed. It has published no fewer than 114 volumes of transactions.

The annual congresses were for many years held in Frankfort-on-the-Main, but for the last twelve years the Association has been peripatetic. In 1893 the members met in Berlin, in 1894 in Vienna—for it is to be noted that many Austrian and Swiss members take part in its proceedings—then Cologne, Breslau, Munich, and Hamburg have each in turn been favoured. This year, for the first time, the Association met at Mannheim, in Baden—a State which has the character of being one of the most progressive in Germany—and it was not inappropriate that so important a centre of the commerce of the Rhine should be distinguished by its presence. Some three hundred members attended this year's proceedings.

Mannheim, as is well known, lies on the point of land where the Neckar flows into the Rhine, and its importance as a centre of the Rhine traffic is marked by the fact that the area of its harbour space is greater than that of any other inland port in Europe. With the adjoining town of Ludwigshafen, on the left bank of the Rhine, the population is 240,000. About one-fifth of the entire wheat import of Germany pays duty at Mannheim, and one-tenth of the import of petroleum. As it stands at the southerly end of the regular Rhine traffic for large vessels, its business to a large extent lies in the transference of goods from these vessels to the railways. These considerations gave quite an exceptional local interest to the proceedings of the first day of this year's meeting of the Verein, when the subject under discussion was "The Financial Aspect of the Internal Waterways of the Empire, with Special Reference to their

Competition with the Railways," and to these proceedings we may now turn.

They were held in the magnificent municipal building, known as the "Rosengarten," and were opened so early on Monday, the 25th September 1905, as 9 A.M. by a short retrospective speech by the retiring President, Professor Schmoller. He aptly described the Society as a "scientific association with practical aims." The new officials were then chosen. Speeches of greeting were delivered on behalf of the Baden Administration by the Minister for Home Affairs, and on behalf of the civic community by the Burgomeister, and thereafter the serious work of the Congress was begun. The discussion on the waterways proved to be of a somewhat technical nature, and much less informative for the stranger than the later discussions, to which we may more profitably pass on.

The subject under discussion on the second day of the meeting was the conditions of labour in the large industries under private management. The miners' strike in the early part of the year, which affected no fewer than 195,000 workmen, and the exceptional number of lock-outs which have taken place in Germany this year lent it quite an exceptional interest. The debate was opened by Professor Brentano, of Munich, who has been a lifelong admirer of the English trade unions. His speech advocated the extension of trade unionism, and the fuller recognition on the part of the State of the principle of collective bargaining, in order that thereby the workmen might be in a position to combat the unfavourable conditions which he alleged the masters were in the habit of adjecting to the labour contract. He further advocated the introduction of a statutory method of adjustment of the disputes between labour and capital; and in order that such a system might be initiated, he proposed that Government and other public contracts should only be entered into with those undertakers who bound themselves to recognise the statutory Board. Against these proposals it was urged that such an interference with the labour contract as Professor Brentano advocated would be the first step towards the introduction of Socialism. Those who wished to take part in the debate had had to

give previous intimation, and the result was that the speakers were called on in such an order as gave a well-balanced discussion. Men of all shades of opinion took part, representative both of labour and capital, and the Professors of Political Economy were also in force. All received a patient and attentive hearing, though a time-limit had to be imposed upon the speeches in order that the discussion might be kept within reasonable limits. The most relevant objection stated to Professor Brentano's proposal was that it was an unheard of novelty, and quite impracticable to bring about agreements between masters and men by outside compulsion, to which the Professor answered that it was no novelty, and referred to a French report upon the system as it is in vogue in some of our colonies. He, for his part, declared himself satisfied that the system of careful adjustment of prices and wages which had existed in the days of the guilds, and had broken down under the system of free competition, would yet one day become general, that in such an adjustment the State would have to take part, and that no longer could it overlook the position which the trade unions had won for themselves.

After the replies, the President for the day essayed the difficult task of summarising the result, which brought that day's discussion to a close. The Verein does not now adopt resolutions. It did so at one time, but this system was found unsatisfactory, and has been abandoned.

On the third day, the discussion was reached which proved to be the main feature of the meeting. The subject, characterised by Professor Schmoller, who gave the introductory address, as the most important social problem of the day, was the relations of the Kartells to the State. In an address of an hour and a half, Professor Schmoller expounded his views on this subject and upon the social and economic conditions of which the tendency to trust and Kartell monopolies was a manifestation. The development of the system of free competition could be traced in history through a period of hundreds, yea, of thousands of years, and yet it seemed that it was now about to disappear. The tendency towards combination must be recognised as a natural and necessary development; and the movement

has its justification in the better adjustment of supply to demand, in the fixing of prices which show fewer fluctuations, and in the avoidance or lessening of commercial crises and bankruptcies. The evils of the system, on the other hand, lie in the great concentrations of capital ; in the construction of centres of commercial power which seek monopoly and the elimination of competition, which do not always use their power in a justifiable manner, and which, on the whole, raise prices ; in the conversion into independent satellites of thousands of the smaller businesses ; and, finally, in the possibility that the power so acquired may be used in a manner unfavourable as well to the workman as to the consumer. In considering the question, a distinction must be drawn between the American trusts and the German Kartells. In the former, the individual concerns which go to form the combination give up their separate identity, and an independent proprietary with an autocratic administration thereafter dominate the industry. The composition of the Kartell is different. It is an association of a number of independent concerns, which, only for a definite period and under a democratic form of organisation, agree to adopt such regulations as will give them the control of the market. It may be regarded as a more healthy form of development and an appropriate means of educating a body of State commercial officials. The demand that such concerns should be placed under legislative regulation is at once natural and justifiable. In his opinion, during the hundred years to come, the Legislature would be as much engaged in regulating the trusts as it was during two hundred years in regulating the guilds. The Kartells cannot be suppressed, nor can the State take over the industries in question, *e.g.*, the coal mines. Nor has the time yet come for a broad legislative policy ; but certain regulations might already be advocated. The State must compel Kartells and similar bodies to file their constitutions, their statutes, and their more important resolutions. It will publish from these such details as affect the other classes of the community. The same law will determine (*a*) how far the Kartells may exclude the Courts of Law ; (*b*) how far their power (Strafgewalt) against their own members may be allowed

to go ; (*c*) how far their exclusive compacts may be allowed validity ; and, finally, (*d*) whether, and to what extent, they may be allowed to lay down unequal rights for their members. It should further bring its influence to bear upon a rational policy as regards prices by encouraging a system of having these determined between organised purchasers on the one hand, and organised sellers on the other. In particular, this should be the case in fixing the wages of labour.

Further, the German Empire should introduce legislation to the effect that companies with capital and borrowed capital amounting to 75,000,000 marks and upwards must receive into their administration, to the extent of one-fourth, persons nominated by the Government, and be compelled to recognise the political and economic interests of the State and of the community. Further, they must yield to the State one-half of their profits beyond 10 per cent.

It will be readily seen that such views were likely to lead to an animated discussion. Besides the leaders, twenty-three members announced their intention of speaking. The result was that, after lasting till half-past seven on the Wednesday, the discussion was adjourned to the following day. At the close of the discussion the Professor replied. He admitted that his proposals were open to criticism. "Vorschläge ohne Bedenken gibt es nicht aber wer kann bessere machen." He emphasised the fact that he was not prepared to advocate the adoption of these industries by the State—the State machine was not adequate for the purpose. The State must, however, make its influence felt, and how otherwise was it to be accomplished? Thereafter the President for the day summed up, and, with a vote of thanks to the leaders in the debates and to the officials, the Congress was closed.

CHAPTER IV

THE EVOLUTION OF THE LAW OF TRADE UNIONS

Scotsman, 14th November 1906

A MEETING of the Scottish Society of Economists was held in the Accountants' Hall, Queen Street, Edinburgh, last night, when a paper was read by Mr John H. Romanes, W.S., on "The Evolution of the Law of Trade Unions." Mr Will. C. Smith, K.C., presided over a fairly large attendance.

Mr Romanes said the tendency of workmen to combine in furtherance of their common interests might be traced far back in British history, as was evidenced by the long list of statutes directed against combinations. As continuous associations, however, the historians of the movement (Mr and Mrs Sydney Webb) dated the existence of trade unions from the eighteenth century, and there seemed to be no doubt that their growth was much encouraged by the industrial revolution and the introduction of the factory system, which resulted in the severance of the worker from the ownership of the instruments of production, and drew a line difficult to pass between employers and employed. But though towards the close of the eighteenth century the industrial environment was favourable to the growth of such combinations, the political sentiment of the time, at least among those with whom political power for the time being rested, was not so, and the legislation against them culminated in the general prohibition of the statute of 1800. It seemed to have been doubtful if that statute extended to Scotland, but an examination of the decisions of the Court in Scotland during the early part of the last century

showed that whether it did or not the common law of Scotland was used to cope with what appeared to the authorities a reprehensible movement. As shown by Hugh Miller, strikes were little known in Scotland prior to 1824. They would have been too overt evidence of the crime of conspiracy to raise wages. The labours of the Parliamentary Committee which sat in 1824 were followed by the repeal of the combination laws in that year, but though now recognised in a formal manner by statute, combinations of working men were still looked upon with extreme disfavour by the law. The Repealing Act of 1825 (the first repealing statute of 1824 having been superseded by a second and modified repeal in the following year), while allowing combinations generally, had forbidden the use of "molestation or obstruction," and the interpretation of those words was so stretched as to include picketing, even of the most peaceful kind. The laws relating to masters and servants were also appealed to. The laws, both in England and Scotland, bore evidence upon them of a time when society was based upon a system of status rather than of contract. He did not know if early Scots legislation ever fixed wages and hours of labour directly. He had not made an exhaustive examination. But he saw that a Parliament held at Perth on the 30th September 1426, charged Town Councils with the duty of fixing the fees of craftsmen and the price of their work. The early regulation of labour by the State in Scotland would, Mr Romanes suggested, make a valuable monographic contribution towards that economic history of Scotland for which they were all waiting.

Justices Regulating Wages

But at present they must pass on to note that the English system of regulating wages by the justices appeared in due time in Scotland also. The powers of justices in Scotland to assess wages was abolished in 1813, though their jurisdiction in questions of wages arising out of voluntary contract remained. The next successes of trade unionists were to be in the direction of securing an amelioration of the law of master and servant. The extent to which cases of master

and servant came before the Courts was shown by a Parliamentary return on the subject, which bore that there were no fewer than 10,339 such cases in a single year. The unions brought the state of the law perseveringly before Parliament, with the result that a Select Committee was appointed in 1865 to inquire into the subject. It reported in that and the following year, and its labours were followed by the Master and Servant Act of 1867. The alternative of imprisonment was abolished by the "Employers and Workmen Act, 1875." After giving further illustrations of the extent to which the law had gone in depriving a master of a ready and legal means of redress against a defaulting workman, Mr Romanes referred to the case of Hornby against Close (1867), where the Court of Queen's Bench held that the rules of a trade union being in restraint of trade were unlawful, and possibly even (in spite of the repeal of the combination laws) criminal, and that a trade union had no standing before the law to enable it to sue a delinquent treasurer. The consternation which that decision produced in the trade union world led to an agitation, which resulted in the passage through Parliament of the charter of trade unionism, the Act of 1871, as supplemented and amended by the Act of 1876. In order further to obviate the consequences of Hornby's case, which put trade union funds at the mercy of dishonest officials, provisions were made for the registration of trade unions by the registrars of friendly societies. The Royal Commission, whose inquiry led to the recognition of the civil status of trade unions, had considered the need of defining the criminal law in reference to the usual methods adopted by trade unions while industrial disputes were in progress. Accordingly, the Criminal Law Amendment Act of 1871 was a second result of their labours. The wide scope of the statute led to many petty prosecutions, and on the advent of the Conservative Government to power, the offensive statute was, in 1875, replaced by the Conspiracy and Protection of Property Act. That statute, and the Trade Union Acts of 1871 and 1876, embodied the existing statute law.

The Proposed Change of the Statute Law

They would now consider the agitation for the alteration of it and the decisions of the Courts which were involved. Dividing the inquiry into three branches—(1) the liability of trade union funds to be taken in execution for the wrongful acts of agents of the union ; (2) the statute law relating to picketing and other incidents of strikes ; and (3) the law of conspiracy as affecting trade unions—he considered them in connection with the recommendations of the majority report of the Commission, and indicated the provisions of the Government Bill. Dealing with the first branch, Mr Romanes said that the general rule of law regarding the liability of an employer for the wrongful acts of his servant was that he was liable, if the wrong done by the servant was done while he was acting within the scope of his employment. If so done, it mattered not that the wrong was done without the master's instructions or authority. That rule, which was well settled in our law, was an exception to the general principle that only the wrongdoer was responsible for the wrong done, and, as was shown by Lord Fraser in his work on " Master and Servant," was based rather upon expediency than principle. Since the Taff Vale case in 1901, where the funds of the Amalgamated Society of Railway Servants were, by the House of Lords, held liable in an action against the union and officials for conspiring to induce breach of contract, and to interfere with the railway company by picketing and other unlawful acts, trade unionists had been apprehensive that the law of agency would be applied in such a manner as would render liable the funds of a whole amalgamated society for the wrongful acts of officials of a branch, perhaps in some remote part of the country, during a local industrial disturbance. It was doubtful, however, if that apprehension was well founded. The matter was carefully considered by the House of Lords in the case of the Denaby and Cadeby Main Collieries (Limited) against the Yorkshire Miners' Association and others, decided on 14th May 1906. The Lord Chancellor (Loreburn), by the attention which he bestowed upon the rules of the Association,

led one to suppose that precautions against too wide an application of the law of responsibility for the wrongs of agents lay very much in the power of trade unionists themselves by carefully distinguishing between the functions of their central and local officials. Very similar dicta were to be found in the opinion of Lord-Justice Cozens Hardy in the Court of Appeal. At the date of the Dunedin Report, the case had been there decided, though not in the House of Lords. As he (Mr Romanes) had already stated, the remedy seemed to him to lie largely with trade unionists themselves, as it appeared quite open to them to take the necessary precautions in framing their constitutions, and then conducting their business in strict accordance with the principles which they themselves had laid down. The majority of the Commissioners made two recommendations under that head of agency, which he considered unexceptionable, so far as they might be found to be practicable —(1) to provide for the facultative separation of the proper benefit funds of trade unions, such separation, if effected, to carry immunity from these funds being taken in execution ; (2) to provide means whereby the central authorities of a union may protect themselves against the unauthorised and immediately disavowed acts of branch agents.

The Government and the Labour Members

A provision for repudiation of unauthorised acts formed part of the Government Bill as it at first stood, but the Government had now conceded the demands of the Labour members for entire exemption. He need hardly say that he was opposed to any such proposal, and he thought the language of the majority of the Commissioners final upon that subject with every fair-minded man. Passing on to the subject of "picketing," Mr Romanes said that the complaint of trade unionists was that, as decided in Lyons against Wilkins in 1895, they might not attend in numbers in order to "peacefully persuade" non-strikers to throw in their lot with them. The majority of the Commissioners recognised fully the right to "peacefully persuade," but they pointed out that for overwhelming numbers to "peace-

fully persuade" an individual was a contradiction in terms. They suggested that the law should substitute a more general provision, which would cover the prohibition of watching and besetting, and include under it the doing so for any purpose whatever when it amounted to intimidation, and they therefore proposed that any person who, to compel another wrongfully and without legal authority, "acts in such a manner as to cause a reasonable apprehension in the mind of any person that violence will be used to him or his wife or family, or damage be done to his property," should be liable to the penalties of the statute. The proposal of the Government Bill under that head recognised the right, in combination with "watching and besetting," to "peacefully persuade," and thus, quite rightly, as he thought, reversed the law of *Lyons* v. *Wilkins* in that respect. It wanted, however, provision for the undue influence of the mere presence of large bands of workmen, especially now that the Attorney-General had deleted from the provision of the Bill, as it originally stood, that men on strike attending at or near a house or place of business should do so "peacefully and in a reasonable manner," the qualifying words "in a reasonable manner." For the legitimate purposes of obtaining information and peacefully persuading, it was not at all necessary, or proper, that workmen should attend in large and vexatious bands. The exceptions, which were thus without proper qualification, being made to the prohibition of "watching and besetting," were depriving the original enactment of all force, for it was not necessary to have special legislation to prevent a breach of the peace, and when short of that strikers were charged with "watching and besetting," they would simply reply that they were doing so to get information or peacefully persuade—an allegation it would be impossible to disprove.

The Law of Conspiracy

As to the law of conspiracy as affecting trade unions, it was a complicated subject, and it was impossible to discuss it in that paper in an exhaustive manner. But he should indicate as briefly as possible how the question stood.

Putting aside for the moment the element of conspiracy, they might begin with the proposition that the persuading of a person to break his contract with another was *prima facie* an actionable wrong, though the right of action failed if the defendant had a reasonable excuse for the course he had taken. That principle of the law seemed well settled, and the liability for damages to which it gave rise was independent of any element of conspiracy, though when a question arose as to whether the defendant had a reasonable excuse, it must be a material element in many cases whether he acted under a sense of individual duty and on grounds personal to himself, or whether he was only one of a number whose action was of an ultroneous nature. Turning now to conspiracy, apart from the element of procuring breach of contract, the present position of the law seemed to be that it would afford a ground of action wherever its leading purpose was, and it resulted in, the injuring or harming of another. He (Mr Romanes) could not see any injustice in the law as it stood, and as expounded in the decisions of *Quinn* v. *Leathem*, and *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland*, but there was undoubtedly a very great deal of uncertainty about it. It seemed to be desirable, as the Attorney-General had said, that the region of the law relating to the civil action of conspiracy "should be carefully blocked out, that its frontiers should be limited, and that there should be carried through it a statutory highway which, so far as these organisations (trade unions) were concerned, might be carefully travelled by the most unwary and confident." This the Government and the majority of the Dunedin Commission proposed to do by, in effect, abolishing the civil action of conspiracy in trade disputes altogether. It might be that that was a fair and wise step, though he thought it required most careful consideration, and the reasons given by the majority of the Commissioners were not, to his mind, convincing.

The Government Proposals

The Government proposals were contained in secs. 1 and 3 of their Bill. Sec. 1 provided, "An act done in pursuance

of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable as a tort." Sec. 3, in its final form, "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills." Without examining all the possible results of those enactments (if they were left standing by the House of Lords), he might confine himself to the remark that he seriously doubted the wisdom of abolishing an action of damages for procuring a breach of contract. He considered that even as things stood, the law provided too little protection to the sacredness of a contract between man and man when that contract happened to be a labour contract. Now, they were apparently going yet a step further. But that was only a final illustration of the slight extent to which the appeal to "principle" had been given a place in those proposed enactments. No doubt the tendency to which, as affecting the daily exposition of the law by the Law Courts, Mr Clyde, in his address to the Scots Law Society the other day, called attention, "the steadily extending predominance of the practical and business point of view and the dwindling influence of rigid and formal principles," must have its place in legislation also. But he respectfully submitted that there was a world of difference between, on the one hand, taking a broad common-sense view of a matter, and on the other, admitting as a new axiom of national policy the proposition that the people—now the sovereign power in the State—could do no wrong.

Mr W. S. Dickson, Advocate, who opened the discussion, dreaded that as a result of the proposed legislation there would arise a strong bitter feeling between employer and employed, a thing which was highly to be deplored.

Mr A. B. Clark said the paper was a purely legal one, and no stress whatever was laid on the economic foundations of the development of the law. He had no great fear of

the proposed law leading to any serious abuse of the power of labour. He thought the intelligent leaders of the trade unions saw very well where their own interests lay, and he was inclined to favour the unions, considering the good record they had in the matter of improving the conditions of their labour.

Mr A. M. Hamilton, Advocate, said the tendency of the proposed legislation was not to strengthen trade unions for the purpose of making bargaining fairer, but to strengthen them for a different purpose—a purpose which was really the imposing of their own will on the industrial community by the force of numbers. The promotion of this side of trade unionism was not only contrary to precedent and principle, but it was contrary to industrial expediency also.

Mr A. H. B. Constable, Advocate, said, with reference to the criticism, that the paper had to a certain extent subordinated the economic side of the development of trade unionism to the legal side of it, it should be borne in mind that after all, at the present stage, the questions which were agitating the public and agitating the trade unionists were questions which were primarily of a legal significance. He protested against the proposal to put trade union funds beyond the sphere of liability for the acts of trade union officials. It was proposed to confer upon trade unionists a privilege which no class, no person, no corporation, no society enjoyed, and it seemed to him, in order to justify such a provision, the trade unionists and their supporters must quit the field of economics and seek their excuse in some other fields. He entered his most emphatic protest, because it seemed to him the modern fashion of slobbering the working man was just as detestable and just as productive of economic loss to society as the other and equally bad one of toadying to the privileged and aristocracy.

The Chairman, in conveying the thanks of the meeting to Mr Romanes, thought perhaps the most important question was what might be expected to be the results to the trade and industry of the country of this complete immunity of the funds of trade unions. He had every faith and hope in the common sense of the leaders of the best trade unions, and he trusted, in the long run, whatever legislation would be

passed, that common sense would assert itself. But he thought it was impossible not to feel that a great deal of risk would be introduced by the proposed legislation if it passed.

Mr Romanes briefly replied, and the proceedings terminated.

CHAPTER V

THE TRUCK ACTS

Juridical Review, 1906

The appointment of a Departmental Committee, under the presidency of the Lord Advocate, to inquire into the operation of the Truck Acts, furnishes a suitable occasion for a survey of the existing law of the subject as embodied in statute and decision.

The word "truck" means "barter,"[1] and the truck system is the name given to the method employed by a master who rewards the labours of his servants by supplying them with commodities instead of paying them in cash. The evils which may attach to such a system are obvious; and the statutes directed against truck are among the oldest which have been passed with respect to the regulation of labour. They date from the fifteenth century; but we do not propose to discuss the early history of this legislation. In 1831 all prior Acts were repealed, and a new Truck Act passed, the statute law of the subject now consisting of that Act[2] and the amending Acts of 1887[3] and 1896.[4] The cardinal provision is contained in the third section of the Act of 1831, which, in the revised edition of the statutes, reads as follows: "The entire amount of the wages earned by or payable to any artificer . . . in respect of any labour by him done . . . shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer,

[1] We find it used in this sense in Hakluyt's Voyages: "Neither would they take any money for their fruite, but they would trucke for old shirts."
[2] 1 & 2 Will. IV. c. 37.
[3] 50 & 51 Vict. c. 46.
[4] 59 & 60 Vict. c. 44.

of or in respect of any such wages, by the delivering to him of goods or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null and void." By sec. 9 of the same Act, transgression of the statute gives rise not merely to a civil remedy, but is made a criminal offence punishable by fine.

The subject may be considered under these five heads :—

I. What deductions may be made in ascertaining the wages payable ?
II. What deductions may be made from the wages so ascertained ?
III. Fines.
IV. What is actual payment ?
V. To whom do the Acts apply ?

I. What deductions may be made in ascertaining the wages payable ; or are deductions from the stipulated gross wage in name of use of material or conveniences supplied to the workman, such as standing-room, lighting and heating, legal ?

This was the question considered in the case of *Archer* v. *James* [1] in 1862, the facts of which case were as follows :—

The plaintiff, an artificer, was employed by the defendants, manufacturers of hosiery goods, as a framework knitter, in making stocking heels out of wool supplied by the defendants. The defendants regulated the amount of work to be done by the quantity of wool which they gave out each week. The plaintiff worked in a room in the defendants' factory, warmed and lighted by the defendants, he used the defendants' frames and machines, and the yarn with which he worked was wound for him at the defendants' expense. The plaintiff found merely the labour. The plaintiff was paid for his work weekly, on the basis of 7d. per dozen heels, subject to a deduction of about 3s. 9d. per week, as a fixed charge for the use of the frames, machines, room, fire, gas, and winding, and to occasional small fines when absent from work. This agreement, which was verbal, was according to the usage of the trade, and weekly settle-

[1] 2 B. & S. 61 ; 31 L.J. Q.B. 153.

ments had been made pursuant to it, and assented to for four years by the plaintiff. He at length brought an action to recover back from the defendants the aggregate amount of the deductions allowed in account, contending that the making of such deductions was prohibited by the Truck Act. There was considerable difference of judicial opinion ; but the ultimate decision that the deductions were allowable seems reasonable. Lord Bramwell put the matter in a nutshell : "Has the artificer earned any more wages ; are any more payable to him than the sum arrived at after allowing the 3s. 9d. and fines? I say, clearly not. The question reduces itself to this, What are his wages? The 7d. a dozen, or 7d. a dozen, less 3s. 9d. To my mind, clearly the latter."

An analogous question is that which arises when deductions are not made in respect of use of machinery, or for material supplied or services rendered to the workman, but in respect of bad work done by him. Such a deduction would appear to be perfectly allowable when it does not exceed the amount of the damage suffered by the employer, and that on grounds sufficiently obvious ; but beyond that it is prohibited under sec. 2 of the Act of 1896.

But while such deductions are lawful, the Legislature continues jealously to guard the interests of the worker in respect to them, by providing, as it does in the Act of 1896, that the contract with him under which they are made shall be either kept constantly exhibited, or shall be signed by him, and shall, when for use of materials, tools or machines, standing-room, light, heat, etc., not exceed in the case of materials or tools what is the actual or estimated cost thereof to the employer, and in the case of the use of machinery, light, heat, etc., a fair and reasonable rent or charge. Further, particulars in writing of any such deduction which is actually made must be supplied to the worker. By sec. 8 of the Act of 1887, it is provided that : "No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement not forming part of the condition of hiring."

The deductions above dealt with are, it is to be noticed, deductions to be made before the wages payable are ascer-

tained ; but from the wages so ascertained, certain further deductions may be made, and to these we pass.

II. What deductions may be made from the ascertained wages ?

By sec. 23 of the Act of 1831, deductions are allowed in respect of—

1. Rent.
2. Victuals dressed under the employer's roof and there consumed.
3. Medicine or medical attendance.
4. Fuel.
5. Horse food for use in the way of trade.
6. Materials and tools for use by miners.

} By contract in writing, and not to exceed real and true value of same.

And by sec. 24 it is provided that the statute shall not prevent advances of wages in respect of—

1. Contribution to any friendly society or bank for savings.
2. Relief of the artificer in sickness.
3. Education of his children.

With these provisions we must take sec. 4 of the Act of 1887 : " Nothing in the principal Act or this Act shall render illegal a contract with a servant in husbandry for giving him food, drink, not being intoxicating, a cottage, or other allowances or privileges in addition to money wages as a remuneration for his services."

The provision in regard to the deductions for the education of workmen's children has, since the introduction of free education, lost its significance. In regard to deductions allowed by the Act of 1831 for medicine, medical attendance, or tools, the Act of 1887, by sec. 9, provides that where such are made " once at least in every year, the employer shall, by himself or his agent, make out a correct account of the receipts and expenditure in respect of such deductions, and submit the same to be audited by two auditors appointed by the said workmen, and shall produce to the auditors

all such books, vouchers, and documents, and afford them all such other facilities as are required for each audit."

Finally, in connection with deductions, the third section of the Act of 1887 provides as follows: "Whenever, by agreement, custom, or otherwise, a workman is entitled to receive, in anticipation of the regular period of the payment of his wages, an advance as part or on account thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge."

Such are the statutory provisions, but it is doubtful if the implied prohibition of any other deductions may not be avoided by the mechanical device of paying the worker in full, and requiring him to repay. If this is permissible, it is obvious that in many cases of petty exactions they will rather be submitted to than the risk of dismissal incurred. The facts of the case of *Owner* v. *Hooper*, decided by the King's Bench Division on 7th July 1903,[1] are suggestive. A master, when paying his workmen their wages, handed to each a slip of paper on which was written a sum of money equal to 2d. in the £ on the amount of the wages. The workmen thereupon handed this sum to the master. It was to provide for insurance premiums paid by the master to cover his own liability under the Workmen's Compensation Act, 1897. The amount so paid by the workmen exceeded the premiums paid by the master. The master was held to have complied with the provisions of sec. 3 of the Act of 1831. It seems, however, on examination, that this case cannot be held to be an authority for the proposition that such repayments are legal, judgment having apparently rested rather upon the view that a repayment was equivalent to a deduction, that a mere deduction was not an improper payment but a non-payment, and that non-payment of wages was not struck at by the Act. This interpretation of the statute, on which the decision in *Redgrave* v. *Kelly*,[2] allowing the legality of a fine, proceeded, and which allowed deductions to be made other than those declared legal by secs. 23 and 24 of the Act of 1831, has now

[1] 89 L.T. 130; 19 T.L.R. 601.
[2] *The Times*, 18th May 1889; 37 W.R. 543.

been negatived by the House of Lords in the case of *Williams* v. *The North Navigation Collieries*, decided on 20th March 1906.[1] The legality of compulsory repayments remains uncertain. But we come now to our third heading, under which we shall consider the above cases more in detail.

III. Fines.

Commenting on the prevalent impression regarding the legality of fines prior to the case of *Redgrave* v. *Kelly*, in 1889, the Official Memorandum on Truck of 1896[2] says : "Throughout all these years, however, and during the time when the Truck Amendment Act of 1887 was passing through Parliament, it seems to have been the common opinion that sec. 3 of the Act of 1831, by enacting that the 'entire wages were to be paid in coin,' coupled with the penal sec. 9 of the Act, rendered fines illegal. When once the 'wage' had been arrived at by deducting anything due for materials, it was believed that the whole of this 'wage' must, under a penalty, be paid."

"This belief, however, was destined to be rudely shaken." It was by the decision in *Redgrave* v. *Kelly*.

In that case, a girl who was employed by Messrs Kelly in their business as confectioners was told that she would be fined 2d. for spoiling a paste brush and some other things, and the fine was accordingly deducted from her wages. A summons was taken out for a penalty under sec. 9 of the Act of 1831 for unlawful payment to her "otherwise than in current coin of the realm." It was argued (1) that the facts amounted to a payment of her wages otherwise than in coin, and (2) that sec. 3 of the Act had been infringed, because the "entire" wages due to her had not been paid in coin.

The matter was taken on case stated to the Divisional Court, which held that what had taken place was not a payment but a non-payment, and that if it was no offence under the Truck Act to neglect or refuse to pay all the wages due, it could not be an offence to neglect or refuse to pay part of them ; and, upon the second question, the Court held that the section that prescribes that the entire wage shall be paid in coin does not mean that every non-

[1] (1906) A.C. 136. [2] C. 8048.

payment of wage is an offence against the criminal law, but only that what is paid as wages must be paid in coin and not otherwise.

Redgrave v. *Kelly* and *Archer* v. *James*, so far as the deductions in the latter case included a small sum as fines for absence from work, must now, however, be held to be definitely overruled by the recent case of *Williams* v. *The North Navigation Collieries*, already cited. Williams and six other hauliers employed by the North Navigation Collieries absented themselves from their service in breach of their contracts, and their masters summoned them under the Employers and Workmen Act.[1] Judgment was given by the magistrate in favour of the colliery company, and damages were assessed at 30s., to be paid in three fortnightly instalments. When the first fortnightly wages became due, the employers deducted 10s. from the wages of each of the debtor workmen, who in consequence raised an action, contending that this was an illegal deduction under the provisions of the Truck Acts ; and, surprising as the result was, the case, when it came on appeal before the House of Lords, was decided in their favour. The opinion of that august tribunal may be summed up in a single sentence from the judgment of the Lord Chancellor (Loreburn) : " It appears to me that an obligation rests upon the employer, under the Truck Act, 1831, sec. 3, to pay in coin (for we are not concerned with bank notes in this case) all the money payable as wages, and that in ascertaining how much is payable as wages, he can subtract nothing except the deductions expressly sanctioned by sec. 23."

So far as the law disallowed recovery of the judgment debt in the foregoing case, it must be pronounced to be in an unsatisfactory state, as is indeed admitted in the opinion of Lord Atkinson. But it is rather with the bearing of the judgment on the legality of fines that we are here concerned. On the assumption that they might lawfully be stipulated for, the Act of 1896 made provisions in regard to them similar to those already cited in regard to deductions for material, etc., and that whether the fine was taken by way of deduction or repayment. But these provisions cannot

[1] 38 & 39 Vict. c. 90.

themselves legalise fines, for Williams's case was decided on an interpretation of the Act of 1831, which excluded as illegal all deductions not specially provided for in the statutes, and the Act of 1896, by sec. 8, enacts that nothing in it shall make lawful any contract or payment which is illegal under the earlier Acts of 1831 and 1887. Fines, therefore, unless in the doubtful case of their being taken by way of repayment, must now be pronounced illegal; and as, to a fair and reasonable extent, they are obviously called for in the legitimate interests of the masters, any impending legislation should make provision for their rehabilitation under the control of the Factory and Mines Inspectors.

IV. What is actual payment? For example, if the workman has assented to subscriptions to a sick society being deducted from his wages, do such subscriptions fall within the "actual payment" to him which the Act of 1831 requires?

This was the question raised in the important case of *Hewlett* v. *Allen*, decided on 7th May 1894 by the House of Lords.[1] The facts of the case were as follows: The plaintiff, Mrs Hewlett, was in the service of Messrs Allen & Sons, and on entering their service she signed an agreement by which she bound herself to conform to all the rules and regulations of the firm. One of the rules was that all the employees were to become members of the sick and accident club, and the rules of the club provided for a weekly subscription to the club funds proportioned to the wages of each contributor. A deduction was accordingly made each week from the plaintiff's wages and paid over to the fund. On leaving the defendants' service, the plaintiff sued to recover the amount of such deductions, except so much as represented her contribution for medicine or medical attendance.

Broadly speaking, the ground of judgment of the House of Lords may be said to have amounted to this, that payment of these subscriptions, under the plaintiff's mandate, was payment to her, and the case was therefore not under the

[1] (1894) A.C. 383.

Truck Acts. Lord Morris referred to sec. 2 of the Act of 1831, which is in these terms: "If . . . any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null, and void;" and he proceeded: "In my opinion the contract in question, even if there was this understanding, certainly does not come within the spirit of the Act; in my opinion it does not come within the letter of the section, as a payment made to the benefit society was not a laying out or expending of the wages of the artificer within the meaning of sec. 2, but was merely an allocation of part of the wages of the employé at the request of the employé, and therefore, in my opinion, it does not come within the section."

But while contributions to a benefit society are not improper deductions under the Truck Acts, there remains the closely connected question of whether an employer should be allowed to make them compulsory. About ten years ago, the London and India Docks Joint Committee issued a regulation that their employees should join the firm's club, and, in order to lessen the likelihood of malingering, should cease on joining it to belong to any other friendly society. This regulation led to agitation on the part of the friendly societies, and in November 1898, the Home Secretary appointed a committee to consider the complaints made by them "that men are compelled by employers, as a condition of employment, to join shop clubs, and to discontinue their membership of other benefit societies; and to ascertain if and to what extent the practices complained of exist, and whether any interference on the part of the Legislature is called for." The Committee reported that the practices existed; but that there was no evidence that they did so to any extent. Legislation followed in the Shop Clubs Act of 1902,[1] which made it illegal for an employer to stipulate that any workman should refrain from joining or should quit any friendly society other than the shop

[1] 2 Edw. VII. c. 21.

club or thrift fund; but compulsory membership of the latter is allowed if the provisions in the workman's favour, which the statute supplies, are observed.

V. To whom do the Acts apply?

The statute of 1831 was very limited in its operation, being, by sec. 19, confined to artificers in certain specified mining, metal-working, and weaving trades, and by sec. 20 it was specifically enacted that domestic servants were excluded from its operation. The Act of 1887, however, extends the protection of the Acts to workmen who come under the Employers and Workmen Act of 1875. In that Act, by sec. 10, it is provided that "the expression 'workman' does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour."

As to a contract personally to execute any work or labour, there is a special provision in the Act of 1887, sec. 10, which requires attention. As already shewn, the case of *Archer* v. *James* decided that the rent of implements was a proper deduction in ascertaining the wages protected by the Acts. Now, suppose a hosier employs women to knit stockings for him at 6d. a pair, they providing their own wool and needles, so much of the 6d. as represents the cost of the wool and the use of the needles would not be wages, and to a certain extent, therefore, the payments demandable from the hosier would be unprotected.[1] To remedy this, the Act of 1887, sec. 10, provides that in the case of articles under the value of £5, knitted or otherwise, manufactured of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone,

[1] Case put in Official Memorandum on Truck (C. 8028 of 1896).

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thread, silk, or cotton lace, or of lace made of any mixed materials—such articles being made by a person at his own home, or otherwise, without the employment of any person under him, except a member of his own family, the Acts shall apply as if he were a workman, and the shopkeeper, dealer, trader, or other person buying the articles in the way of trade were his employer, and the provisions of the Act with respect to the payment of wages shall apply as if the price of an article were wages earned during the seven days next preceding the date at which any article is received from the workman by the employer. The Sovereign is given power by Orders in Council to make partial suspensions of this provision where such are considered desirable.

Turning now to the interpretation of the word " workman," given by the Employers and Workmen Act, 1875, the criterion—always excepting the case of domestic and menial servants—is that of " manual labour." Waiters and shop assistants are excluded—waiters, because they are menial servants ; shop assistants, because they are not primarily engaged in " manual labour." [1] In the case of *Morgan* v. *The General Omnibus Company*, in 1884,[2] it was laid down by the Queen's Bench Division that the conductor of an omnibus does not come under the definition, since he does not actually lift passengers in and out of the omnibus. This gives the anomalous result that the driver of an omnibus will be within, while the conductor is without, the statutes, and is inconsistent with opinions given in the Scotch case of Wilson.[3] It has also been held in England, in the case of *Hunt* v. *The Great Northern Railway*, in 1891,[4] that the guard of a goods train does not fall within the term " workman."

By a long train of decisions in England, of which *Ingram* v. *Barnes*, in 1857,[5] and *Sleeman* v. *Barrett*, in 1864,[6] are examples, and the case of *Squire* v. *The Midland Lace Company*,[7] is the most recent instance, it has been held that unless it is a term of the contract of service that the work to be

[1] *Bound* v. *Lawrence* (1892), 1 Q.B. 226.
[2] 13 Q.B.D. 832.
[3] (1878), 5 R. 981.
[4] (1891), 1 Q.B. 601.
[5] 7 E. & B. 115, 132.
[6] 33 L.J. Ex. 153.
[7] (1905), 2 K.B. 448.

performed under it shall be executed by the workman personally, the Acts do not apply.

The administration of the Truck Acts is committed to the Inspectors of Factories and Mines. A provision in the Act of 1896, extending to shop assistants the safeguards it supplies in regard to fines, remained a dead letter for want of a proper authority to enforce it. This should be kept in view in any amending legislation.

CHAPTER VI

DAMAGES AS A DEDUCTION FROM WAGES

Juridical Review, 1911

Damages as a Deduction from Wages (*Keates* v. *Lewis Merthyr Consolidated Collieries Ltd.*, 17th July 1911, 27 T.L.R. 550).—Since the abolition, by the Employers and Workmen Act of 1875, of imprisonment as a sanction for the fulfilment by a workman of his obligations under the labour contract, an employer's remedy against a recalcitrant employé has been reduced to a claim for damages, subject to the proviso of the statute that with the consent of the complainer the Sheriff may accept security for the fulfilment of the contract without awarding damages. This statute (which has a wide application, though it does not cover any domestic or menial servant) conferred upon the Sheriff a very peculiar jurisdiction for composing differences between employer and employed. By sec. 3—

" In any proceeding before a (Sheriff Court), in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such . . . the Court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers (that is to say) :—

" (1) It may adjust and set off, the one against the other, all such claims on the part either of the employer or of the workman, arising out of, or incidental to, the relation between them, as the Court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise ; and

" (2) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract

between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages or other sums due as it thinks just."

It is to be noted that at the date of this statute, the payment of wages was affected by the stringent provisions of the Truck Acts, which, in the case of *Williams* v. *Norths Navigation Collieries*,[1] were applied by the House of Lords to the effect of rendering it illegal for an employer to deduct from wages payable to his employees sums awarded to him as damages against them for breach of their contracts of service. The anomalous nature of this result drew from Lord Atkinson a somewhat strong expression of opinion. " It may well be that the appellant has no merits, and that a decision in his favour will enable him to violate his duty with impunity, and evade the payment of his just and legally established liabilities, but if that be so, the fault must lie on that 'tutelary shelter,' to use Lord Bowen's words, 'which the Legislature has thrown up around the workman without taking sufficient care so to mould and fashion it that it could not be open to abuse.' "

The recent decision of the House of Lords in the case cited at the head of this note has put the matter on a footing consonant at once with equity and good sense. It is to be observed that while in Williams's case the sums of damages were in judgments duly obtained in proceedings under the Employers and Workmen Act, no magisterial authority was asked to their recovery by way of deduction from wages. It is in this respect that Keates's case differs from its predecessor, for in an action under the statute, in addition to a claim for damages for breach of contract, amounting to 5s. 11d., made against the employé for " having wrongfully absented himself from the service of the plaintiffs at their Bertie pit on the 30th day of April 1909," they further claimed " that the wages earned by and due to the defendant from the plaintiffs be ascertained, and that the said respective claims for damages and wages be adjusted and set off by the Court." It was held by the stipendiary magistrate for the petty sessional division of Pontypridd that under

[1] (1906) A.C. 136.

the provisions of the statute, as invoked by the above-mentioned supplementary claim of the plaintiffs, he was entitled to ascertain the wages due to the employé as at the date of his judgment, and to order deduction therefrom of the damages and costs awarded by him in the proceedings. This judgment has been upheld in succession by the Divisional and Appeal Courts of the King's Bench Division ((1910), 1 K.B. 386 ; 2 K.B. 445), and now finally by the House of Lords.

For the workman it was contended that no claim to his wages had been stated by him with the effect of bringing such a claim within the terms of sec. 3, subsec. (1), of the Statute, and that it was futile for the employers to make a quasi-claim at his instance against themselves in order to obtain the right of set-off. To do so was an attempt to evade the provisions of the Wages Attachment Abolition Act, 1870, and the decision in Williams's case. To which it was answered that a workman may have a claim against his employer, although he does not choose to put it forward, and that the word " claims " in sec. 3, subsec. (1), of the statute includes subsisting obligations between employers and workmen. This contention has now been upheld by the unanimous decision of the House of Lords, Lord Atkinson observing, " I think the word 'claims,' which the Court 'may find to be subsisting,' is adequate, though not happily chosen to indicate claims which the Court may find either party has the right to make whether they have in fact put them forward in the litigation or not, and, therefore, that the stipendiary magistrate had in this case power to make the decree or order he made, and that the judgment of the Court of Appeal is therefore right, and should be affirmed."

CHAPTER VII

THE VILLAGE ECONOMY OF LAUDER [1]

English Historical Review, 1914

Since Sir Henry Maine published his "Village Communities in the East and West," in 1871, the system of rural economy practised at Lauder, in Berwickshire, referred to by him, has attracted considerable attention. He thought it was perhaps the most perfect example of the primitive cultivating community still extant in this country or in Germany. Notwithstanding, there is no satisfactory account of it available to students. Sir Henry drew his information from an official return,[2] in which "Notes as to specialties connected with the Burgh of Lauder's property" is printed as an appendix. These Notes were not prepared for the purposes of the return, but in connection with a local discussion, in 1868, of the adjustments which would be required if non-burgesses were to be admitted to the Town Council with whom lay the administration of the common lands. The special purpose for which they were prepared, and the amount of detail which they include, detract from their value as an account of the permanent features of the system. Again, the description found in the local reports from the Commissioners on municipal corporations in Scotland (1835) confuses in an unfortunate manner the "hill-parts" with the "burgess acres," and has, in consequence, misled Sir Laurence Gomme into a material inaccuracy in his account

[1] This paper is largely drawn from notes left by the late Mr Robert Romanes, Solicitor, who was Town Clerk of Lauder for upwards of forty years.

[2] "Return of all Boroughs and Cities in the United Kingdom possessing Common or other Lands, 10th August 1870."

of the system contained in Chapter VII. of "The Village Community."

The burgh can claim a respectable antiquity. There is evidence that in the twelfth century it was governed by bailies under the overlordship of Richard de Morville, Constable of Scotland. When it obtained a Royal Charter (it is the only royal burgh in Berwickshire) is not clear, but it seems probable that it may have been one of the creations of Robert the Bruce. The existing charter is a Novodamus of James IV., dated 21st December 1502. It narrates the destruction of the earlier charters, and proceeds: "Nos igitur . . . de novo infeodavimus, dedimus, concessimus et confirmavimus, et hac presenti carta nostra, infeodamus, damus, concedimus ac pro nobis et successoribus nostris pro perpetuo confirmamus burgensibus et communitati antedictis prefatum Burgum nostrum de Lawdir, in liberum burgum pro perpetuo, cum omnibus et singulis terris, annuis redditibus et possessionibus quibuscumque eidem pertinentibus cum potestate dictis burgensibus et communitati terras suas communes frangendi et arandi ad ipsorum magis commodum et utilitatem." Sundry other provisions with which we are here less immediately concerned follow. This charter was confirmed by an Act of the Scottish Parliament, held at Edinburgh, of date 28th June 1633. The common lands referred to in the charter have belonged to the community from time immemorial; and their possession probably extends to a period long anterior to the date of the charter.

Lauder was at one time surrounded by a wall, outside of which were crofts and rigs, now, and so far back as knowledge goes, the private property of individuals, and not differing in their tenure from other freehold land in Scotland, except that most of them, being held according to the feudal tenure of burgage, there is no feu-duty payable. They corresponded, apparently, with the closes or crofts described by Professor Vinogradoff in dealing with the English township.[1] Passing from them we may conveniently deal with (1) the burgess

[1] "In regard to the house and to the close or croft adjoining it, the householder had a right of private ownership which seems at first sight to be as well grounded as the freehold property of the present day" ("The Growth of the Manor," p. 183).

acres ; (2) the part of the common under the plough, known as the hill-parts ; and (3) the rest of the common used as grazing land.

1. *The Burgess Acres.*—According to Brentano, the primitive qualification for burgess-ship was the possession of town land.[1] At Lauder (where neither merchant nor craft gilds seem ever to have been developed) the essential requisite has from time immemorial been the possession of a piece of the town's lands, known as a "burgess acre."[2] The name has no reference to old Scotch or imperial measurement. These "acres," in fact, extend from about 1½ to over 3½ imperial acres each. There are, within the bounds of the burgh lands, 105 lying in different divisions beyond the rigs and crofts already mentioned, and extending in all, according to a plan of 1803, to 236 acres 2 roods and 22 poles. They are shown upon the 6-in. ordnance survey map, and some of them exhibit the sweeping curve of a reversed S, a feature which has been observed elsewhere, and which may be due to the boundaries having been drawn by the plough rather than by straight rods.[3] At one time, prior to the introduction of winter crops, they were grazed, after harvest, by the bestial of the burgesses in common. So far as mere ownership goes, they may belong to anyone capable, by the law of Scotland, of owning heritable property (real estate), *i.e.*, an acre may be held by a female, minor, or absentee in any part of the world.[4] They may also be divided ; but when an acre is divided it, of course, ceases to serve as a qualification for a burgess. To each of them there is a separate title. The description mentions the part of the burgh territory in which the acre lies, and identifies it by reference to the surrounding pro-

[1] "History and Development of Gilds, etc.," p. 29.

[2] Besides the territorial burgesses, with whom alone we are concerned in this article, and who were free to all rights and privileges of the burgh, there were at Lauder "Cassa" burgesses, who were free of the customs dues for passage, and "Stallangers," who were entitled to dispose of goods within the burgh at their stalls. Unfreemen were regularly taxed for permission to reside and trade in the burgh.

[3] Maitland, "Domesday Book and Beyond," p. 379.

[4] A Minute of the Town Council of 7th October 1692 required non-resident owners of burgess acres to let them to resident burgesses, and a Minute of 20th July 1691 suggests that the hill-parts, after referred to, were at that date reserved for residents.

perties, the names of whose owners are given. After the description, there is a clause somewhat in these terms : " together with the outfield and (or) fee-land part belonging thereto as the same shall happen to fall by cut and cavil through the common hills and breaks of the said Burgh." This gives right independently of burgess-ship to share in the allotment of the hill-parts to be presently explained.

The owner of an acre who wishes to enter as a burgess intimates his desire by petition to the Town Council, and pays entry money if due from him. He is admitted if eligible. In 1767 the Town Council enacted that no woman, and in 1830 that no mere liferenter, should be admitted as a burgess. Prior to 1852 no one over fifty-five years of age with a family was admissible ; but in that year the restriction of old age was abolished. Sons of burgesses may be admitted on reaching sixteen years of age in the event of their becoming separately possessed of an acre. They pay no entry money ; and sons-in-law are also exempt. One acre, known as " Raithes," is destined for behoof of fallen-back burgesses and their families. While theoretically there might be as many burgesses as acres, this has probably never been the case. In 1868 there were 54 burgesses owning 96 acres. In 1907 there were only 33 owning 35 acres. This fall in the number of acres held by burgesses is believed to be largely owing to their acquisition by the Earl of Lauderdale. At the latter date, the remaining figures were : 5 non-burgesses held 47 acres, 15 women held 21, besides which there were the acre " Raithes " and one which had been broken up, part having been acquired by the parochial board for a cemetery.

2. *The Hill-parts.*—The common lands extend to fully 1,700 acres. Beyond some grass parks, which are let, and the rents of which go into the common good of the burgh, they consist of heather, rough grass, and cultivated grass. But a shifting portion, known as the " hill-parts," and extending to about 100 acres, is always kept under the plough. To quote the Notes of the late Mr Robert Romanes : " The arrangement is this. The Town Council resolve to plough and cultivate for a certain number of years a definite portion of the common, and prescribe a rotation and course

of management so arranged that, in the last year of the rotation, the land shall be left in grass to be pastured with the rest of the common, and a yearly cess is imposed for each hill-part to meet expenses, such as roads, drains, and lime, etc. The owners of the burgess acres are required to say whether they wish a hill-part on the conditions prescribed, and on the number of hill-parts required being ascertained, the portion of the common destined for cultivation is divided or cut into the requisite number of lots, and the hill-part to be allotted to each burgess acre, for which a hill-part has been required, is determined by lot or cavil." The area is then farmed in these separate portions by the allottees or their tenants (for hill-parts may be let) ; and the course of cultivation being laid down, there is uniformity in cropping.

"The decision in regard to the part of the common to be cultivated is arrived at on various considerations, but there are no definite rules. If a permanent improvement of the common can be effected, good and well, and this is kept in view, but unless there is good promise of present advantage, there would be no demand for the hill-parts. When the years of the prescribed rotation are about to expire, it is the duty of the Town Council again to consider whether and where other hill-parts shall be laid off, and what the stipulations should be."

At one time, each hill-part was given out in three portions, but this plan was abandoned in the course of the eighteenth century. The printed papers in proceedings early in the nineteenth century in a case in the Court of Session [1] give 1744 as the date when the hill-parts were first given off in 105, corresponding to the number of burgess acres, instead of 315 shares. It may be, however, that even after this date, recurrence was occasionally had to the threefold division, for a resolution of the Town Council of 21st June 1780 directed that a portion of the common known as Scareslawhill should be divided into 105 parts to facilitate improvements, in place of 315 parts as formerly. It is clear, from his reference to the date 1744, that it was the former threefold division of the "hill-parts" which led

[1] *Magistrates of Lauder* v. *Spence*, 1821, Court of Session Cases, 1st series, vol. i., p. 17.

the reporter on Lauder, in the municipal corporation's reports of 1835, into the erroneous statement that in early times there were 315 burgess acres. It has been conjectured that it was in order to secure a fair distribution of the land that each hill-part was thus given out in three portions; but it seems a much more probable surmise to connect the practice with a three-field system of cultivation. The "arable lands," says a writer whose statement, giving a general idea of common field townships throughout England, is quoted by Sir Henry Maine,[1] "were, moreover, divided into compartments or 'fields' of nearly equal size, and generally three in number, to receive, in constant rotation, the triennial succession of fallow, wheat (or rye), and spring crops (as barley, oats, beans, and peas)."

It is the system of shifting of the "hill-parts," together with the division by lot, which has been the centre of interest, both features having been taken to represent extremely archaic survivals. It has been argued that what exists at Lauder is an indication that extensive culture prevailed among some of the Germanic settlers in England.[2] But, as we have seen, the title of each burgess speaks of this ancillary right to a hill-part as the "outfield and (or) fee-land part," and what we have at Lauder seems but a striking instance of the old Scotch system of "outfield" cultivation, which, being applied to common lands, necessitates a division among the commoners, which again is quite naturally carried out by resorting to the process of lot. This "outfield" system in Scotland has been described by Sir Walter Scott in the first chapter of *The Monastery*, where he speaks of the "outfield land, from which it was thought possible to extract a crop now and then, after which it was abandoned to the 'skiey influences' until the exhausted powers of vegetation were restored."

3. *The Grazings.*—The rest of the common is unploughed and is used as pasture. In 1907 each burgess had right to graze on it two cows, or an equivalent, and twenty-two sheep, and the widow of a burgess might graze one cow

[1] "Village Communities in the East and West," p. 93.

[2] See Dr Cunningham's "Growth of English Industry and Commerce in the Early and Middle Ages" (4th edition), pp. 44 (note) and 73.

and fifteen sheep. The stints are fixed from time to time. There is one common cowherd and one common shepherd. In respect of the grazing, such a cess is payable to the burgh as the Town Council may determine, having in view, not the value of the grazing, but the necessities of the burgh. According to the present practice (though it seems probable that at one time there would be less distinction between the two cases) the right to the grazings differs from the right to the hill-parts in the following respects :—

1. Ownership of a burgess acre carries right to a hill-part ; but only those who have been admitted burgesses, and their widows, share in the grazings.

2. The right to a hill-part may, the right to the grazings may not, be transferred.

3. Each burgess acre carries right to a hill-part, but the holding by a burgess of more acres than one does not increase his grazing rights.

4. Though the owner of an acre be an absentee, his right to a hill-part is not affected ; but the burgess or widow who desires to share in the grazings must reside within the burgh.

It will be observed from King James's Charter that the grant is to the " burgensibus et communitati," and much friction and litigation has arisen as to the respective rights of the burgesses, the community at large, and the Town Council. These questions, however, do not fall within the scope of this paper, whose purpose has been to give some account of the main economic features of the system.

CHAPTER VIII

AN ENCLOSURE PROCEEDING IN MELROSE IN THE YEAR 1742

Scottish Historical Review, 1915

Cumbrous as may have been the procedure by private Bill under which Enclosures in England were effected, it had the advantage that the publicity of the method has enabled statistics to be gathered of the progress of enclosure in that country. It may be doubted if like statistics will ever be available for Scotland. For in Scotland the procedure took the form of a private lawsuit, carried on by the landowners concerned under the provisions of two Acts of the Scots Parliament passed in 1695. One of these was passed "for preventing the discords that arise about Commonties, and for the more easie and expedit deciding thereof in time coming."[1] It excepted "Commonties belonging to the King and Royal Burrowes," but others might be divided "at the instance of any having interest, by Summonds raised against all persons concerned, before the Lords of Session." Heritors (*i.e.*, landowners) having rights in commonties brought to division in this way were to have their interests "estimat according to the valuation of their respective lands or properties. And which Divisions are appoynted to be made of that part of the Commonty that is next adjacent to each heretors property." According to Erskine,[2] no method was known for dividing commons or commonties till the passing of this Act.

The other Act[3] dealt with the redistribution of lands

[1] 1695, c. 38.
[2] "Institutes of the Law of Scotland," book iii., title iii., sec. 56.
[3] 1695, c. 23.

lying run-rig, the term by which the open-field system was known in Scotland and Ireland.[1] A rigg in Scotland was a measure of land extending to 240 paces by 6 paces, or 600 ft. by 15 ft., and thus containing 9,000 sq. ft.[2] It was thus rather smaller than the English rood, which was based on a rod of 16½ ft., and a furrow of 660 ft. This Act narrates "the great disadvantage arising to the whole subjects from Lands lying run-rig, and that the same is highly prejudicial to the Policy and Improvement of the Nation, by planting and inclosing," and provides for a division of such lands before the "Shiriffs, Stewards, and Lords of Regality or Justices of Peace of the several Shires where the Lands ly." In making this division, the Judges are "restricted, so as special regaird may be had to the Mansion houses of the respective Heretors, and that there may be allowed and adjudged to them the respective parts of the Division, as shall be most commodious to their respective Mansion houses and Policy."

Enclosure in Scotland under the provisions of these statutes seems to have proceeded slowly. Eighty years later, Adam Smith remarked, "The present high rent of inclosed land in Scotland seems owing to the scarcity of inclosure, and will probably last no longer than that scarcity." [3] An instance of a proceeding under the statute for the division of run-rig lands has come under the notice of the writer, and is, no doubt, illustrative of many such proceedings.

Certain run-rig lands, described as lying in the Annay, Rack, Weirhill, and Bishopflat of Melrose, within the Regality and Parish of Melrose and County of Roxburgh, were divided after separation of the crop of 1742; and, with a prolixity to be expected from a legal document of these days, the official record of the division narrates the whole course of the lawsuit from its commencement to the taxation of the costs. It appears to have been the better educated and presumably more intelligent members

[1] Seebohm's "The English Village Community," p. 3.
[2] "The English Dialect Dictionary," art. "Rigg."
[3] "Wealth of Nations," book i., chap. xi.

of the community who took the initiative--Dr John Rutherford and Charles Wilkieson and William Hunter, writers in Melrose. The Superiority of Melrose having, after the Reformation, been annexed to the Crown, and ultimately acquired by the Buccleuch family, they raise a " precept of Division of Run-rig " before " George Grant, Factor for the Right Honorable Lady Isabella Scott, daughter of the deceast Ann, Dutchess of Buccleugh, Bailie of the Regality of Melrose." After citing the last-mentioned Act, they aver that their lands " lie Runrigg or rundale and interspersed not only with one anothers Lands but also with the other Lands in the said Annay, Rack, Weirhill and Bishopflat. . . . Wherefore they the pursuers had good and undoubted right to pursue for a Division and Excambion of the Inter Jacente grounds or runrigg or rundale Lands either belonging to themselves severally or to the said other Heritors and at present possessed whither as property or commonty so as quantity and quality considered, so much might be reciprocally excambed between them and set off and adjudged in the way of Excambion and Division as might serve to make the Lands belonging to each of the said heritors lye contiguous and distinct without any mixture or interjacency of one anothers Lands." The failure of the pursuers' attempts to have the redistribution of the lands carried out extrajudicially is then narrated, and the necessity of the present proceedings averred.

The remaining feuars being called into the Bailie's Court, John Hoy and Alexander Wilkieson alone appear and object. The former maintained that his four acres being enclosed by planting should not be affected by the division, but as two riggs or dales belonging to Andrew Dawson lay in the middle of his lands, his objection was speedily overruled. Wilkieson presented a petition to the Bailie, urging a similar plea in regard to his property, known as the Tenter Yard, and the question of whether it was part of the run-rig lands or not was remitted to a proof, on which it was found that the petitioner " had succumbed in proving that the piece of ground called the Tenter Yard is or ever was enclosed, and that the pursuers

have proven that it is not now (nor has been for upwards of forty years past) enclosed by any Dyke, Ditch or Hedge : Found it also proven that there is and has been a common and promiscuous pasturage used by all the Heritors of the runrigg lands of Melrose yearly from after Harvest till Seed time, and that this common pasturage is extended over the Tenter Yard as well as the other lands, and therefore refuses the desire of the Petitioner."

These objections illustrate the sort of questions which were likely to occur in such proceedings. Being disposed of, the way was clear for receiving a report from a measurer of the lands, taking evidence on the qualities of the soils, and then portioning out the new holdings. Before the final division, Dr Rutherford, the leading pursuer, acquired the rights of three other proprietors, and received a proportionately larger allotment—a significant suggestion of the way in which consolidation of holdings would be facilitated by the new system. Representations of the feuars in regard to roads were given effect to, and the Decreet of Division contained a declaration that the feu-duties payable to the Superior were to remain as formerly. Thus the basis of the rural economy of Melrose was modernised.

The connection between enclosure and agricultural improvement is well illustrated by what took place at Melrose. Dr John Rutherford, referred to in these proceedings (who is not to be confounded with the distinguished grandfather of Sir Walter Scott), was a gentleman who had made agricultural improvements his favourite study, and is reported to have been the first, in his part of the country, who sowed turnips by the drill in the field. He began his turnip experiments in 1747, a few years after his share of the run-rig lands had been allotted to him. The curious will find an interesting account of his agricultural enterprises (which include also the introduction of artificial grasses) in Ure's " View of the Agriculture of the County of Roxburgh," one of the numerous county reports made to the Board of Agriculture after its institution in 1793. In using his turnips to fatten two bullocks, Dr Rutherford was extraordinarily successful, which serves to recall old

Thomas Tusser's lines, written almost two hundred years earlier—

> " More plenty of mutton and beefe,
> Corne, butter, and cheese of the best,
> More wealth anywhere (to be breefe),
> More people, more handsome and prest,[1]
> Where find ye (go search any cost)
> Than there where enclosure is most ? "

[1] Neat.

CHAPTER IX

A FRANCO-SCOTTISH ECONOMIC MEDAL

Scotsman, 26th April 1920

An interesting addition has just been made to the collection of Adam Smithiana, which is preserved in the Municipal Museum of Kirkcaldy, the birthplace of the celebrated economist. It consists of a medal struck by the Société d'Économie Politique of Paris in 1876 in joint honour of Adam Smith and of the no less famous French statesman and economist, Anne Robert Jacques Turgot. On the obverse of the medal (which is in silver, and 2¼ in. in diameter) is the bust of Adam Smith in a representation which differs somewhat from the well-known features of the Tassie medallion. The wig is wanting, but the natural hair is curled and tied in a queue in a typical eighteenth-century manner. Around the medal are Smith's name and dates, "1723, Adam Smith, 1790," while in the small space between the bust and the first date is the legend in minute lettering, "Richesse des Nations, Publ. en 1776." On the reverse is the bust of Turgot, showing strong, rounded features and firm mouth. The hair accords with what Dupont de Nemours (his secretary, biographer, and friend) tells us—that, clad as a magistrate, his locks scattered on his shoulders, he formed a striking picture. Corresponding to the obverse, we have "1726, Jacques Turgot, 1781," and the legend, "Liberté du Travail Édits de 1776." This, as we shall see, refers to the work which was the outstanding feature of Turgot's brief tenure of office as Comptroller-General of the Finances of France.

It was a happy thought which suggested to the French Society the commemorating of these two contemporaries

in this way. Not only was there a close parallelism between their politico-economical ideas, backed as these were in each case by an intense love of liberty and freedom, but the friendship which existed between them made it peculiarly fitting that they should be thus associated. Smith met Turgot while he was abroad as tutor to the young Duke of Buccleuch, and in later life wrote that he flattered himself that he had his friendship and esteem.

The Minutes of the French Society disclose the circumstances under which the project of striking this medal was adopted in 1876. The subject was introduced by M. Michel Chevalier (whom readers of Morley's "Cobden" may remember for the important part he played in bringing about the Commercial Treaty between France and Great Britain in 1860). He recalled the fact that the year 1876 was the hundredth since the publication of the great work of Adam Smith, who was, conjointly with the French economists of the eighteenth century, the principal founder of political economy; and, in the subsequent discussion, it was suggested that the medal might also recall the celebrated edicts of Turgot.

The distinguished Frenchman thus linked with Adam Smith was one whose ancestors had for many generations occupied high positions in several departments of the State. He had renounced the clerical career for which he was at first intended; and, after serving in a judicial office, had, in 1761, been appointed Intendant of Limoges. Here he administered a province with a population of about 500,000, and learned at first hand to recognise what reforms were necessary in the financial administration of France. Of these he was able in his own province to carry out the abolition of the Corvée, or system of forced labour on the roads; and to his superior, the Comptroller-General of the day, he urged internal free trade in corn throughout France, free trade in capital, and reforms of the taxes. He declined promotion that he might devote himself to the reforms which he had in progress, and laboured in the affairs of his province for thirteen years. When, however, Louis XVI. succeeded in 1774, and France seemed about to enter upon a new era, he accepted a post in the Cabinet,

and after a brief tenure of the office of Minister of Marine, became Comptroller-General of the Finances. In his desire to carry out reforms of the necessity of which he was convinced, he was supported by the young King. In 1776 he introduced his famous edicts, abolishing throughout France the Corvée (which he had already abolished in his own province), and also abolishing the Jurandes, or Trade Incorporations. These edicts were refused by the Parliaments, but were registered in consequence of the exercise by the King of his royal prerogative. About this time, the King wrote to him : "The more I think of it, my dear Turgot, the more I repeat to myself that there are only you and myself who really love the people." A copy of the Procés Verbal of what passed at the bed of justice upon the registration of the edicts was sent by Turgot to Smith, who, in the letter already referred to, says that he preserves it "as a most valuable monument of a person whom I remember with so much veneration." The forces of reaction under the *ancien régime* were, however, unfortunately too strong for the reforming Minister, and the weak King sacrificed him to them. The edicts were recalled.

A copy of the medal above referred to is now being secured for the Kirkcaldy collection under peculiarly gratifying circumstances. Through the good offices of friends in Paris, the French Society (of whom the President is now M. Yves Guyot, the well-known publicist) was approached, and it was found that the mould was still extant and in the custody of the French Mint. Learning of Kirkcaldy's desire to possess a specimen of this unique medal, the French Society, with great courtesy, have had a special copy struck, and it has now reached its destination. Thus the value which the medal has as an historical and literary emblem has been enhanced to the recipients by the compliment which the French Society have in this manner paid to Adam Smith's native town.

CHAPTER X

A FRENCH SOCIETY OF ECONOMISTS

Scotsman, 12th October 1921

Though the leading French society for the study of political economy cannot claim the seniority of the Political Economy Club of London (which is this year celebrating its centenary), it has now a long record behind it. Known originally as "La Société des Économistes," but now and for a long time as "La Société d'Économie Politique de Paris," it dates from 1842.

Viewed historically, it is not surprising that France should have a vigorous society of this nature, for in its beginnings modern political economy is of Franco-British origin. In an interesting article which appeared in the *Contemporary Review* for January 1881, the late Professor Jevons was inclined to attribute the parentage of political economy to the French writer, Richard Cantillon. He, however, was a somewhat obscure writer, and it remains substantially true that the foundations of modern economics are largely to be found in the work of Adam Smith on the one hand, and the writings of the sect of the economists or physiocrats in France on the other. These latter, as is well known, found the true source of wealth to be in agriculture, and arguing that all taxes ultimately fall upon the landed interest, they advocated the single tax. Their head was François Quesnay, whose "Tableau Économique," printed at Versailles in 1758, may be considered the most characteristic exposition of their creed.

As Adam Smith's work (published in 1776) became known in France, his doctrines supplanted the narrower views of the physiocratic school; and their final extinction

may perhaps be given the date 1802, in which year the Institute laureated Nicolas Canard for his memoir in answer to their question, "Is it true that in an agricultural country every form of impost is eventually borne by the owner of land?" Canard entirely broke with the native French school, laying stress with Smith upon work as the origin of value.

But the chief exponent of the liberal school of Smith was J. B. Say, whose work, "Traité d'Économie Politique," appeared in 1803. Though Napoleon is said to have been a reader of the works of the Scottish economist (it may have been there that he learned the expression, "Nation of shopkeepers," though the phrase is older than Smith), the attitude of the Empire towards the free discussion of political questions is illustrated by the fact that the Administration invited Say to abstain from issuing a second edition. The result of this "invitation" was that it was only after the fall of the Empire in 1814 that a second edition of his work appeared.

Of economic societies, such as the Political Economy Club of London, there remains no trace whatever prior to the Revolution of 1830; and it is unlikely that there was any. But after that date we find that in an informal way men interested in political economy began to dine together and discuss economic questions. The first ten years of the July monarchy were, however, too unsettled for these to develop, and the present Society begins its continuous existence from the date already mentioned in 1842.

It was the time of Cobden and the League, and the Society very early committed itself to Free Trade principles. It offered a banquet to Cobden, which was held on the 18th of August 1846, under the presidency of M. Horace Say, J. B. Say's son. Cobden spoke in French to his congenial audience.

Accepting the teachings of Adam Smith and Say, he found that they were only known to a small number of enlightened men. The business of the League was to make them known to the people. He quoted the words of Louis XVI.'s reforming Minister, Turgot, as fitly expressing its doctrine: "What the State owes to each one of its

members is the destruction of obstacles which hinder them in their industry, or which interfere with their enjoyment of its results. If these obstacles remain, particular benefits will not diminish the general loss since the cause of it is untouched." He declared that all that he had said and written during the last seven years was but a commentary on these words. Imitating the Napoleonic tactic, they had thrown all their forces on one division of the enemy. They were convinced that, could they carry the abolition of the Corn Laws, all the other monopolies would be compelled to capitulate at discretion. And they had something more in view than the extension of commerce, the multiplication of the satisfactions of life, the stimulation of industry, and the higher remuneration of labour. Gigantic and ruinous armaments stimulated rather than appeased war-like passions ; the free exchange of mutual services among the peoples was the surest safeguard against national hostilities. Let us think that liberty will confide to commerce, the negotiator *par excellence*, those international relations which run such risk when they are exclusively left in the trembling hands of diplomacy. It is interesting to note that Bastiat, the French Cobden, sat side by side with his prototype on this occasion.

The Revolution of 1848 aroused the energy of the Society in another direction. In 1831 a Chair of Political Economy had been founded at the College of France, and successively occupied by J. B. Say, Rossi (later Ambassador at the Vatican), and Michel Chevalier. The Provisional Government suppressed this chair. The Society repaired to the Hotel de Ville with an address to Lamartine on the subject, and in the result the chair was restored. Further, the Communistic, or at least Socialistic, doctrines of the so-called Workers' Commission encountered the hostility of various members, among whom were Chevalier, Wolowski, and Joseph Garnier. It was this circumstance that gave occasion to the well-known but unfinished Economic Harmonies of Bastiat, who died shortly thereafter in 1850. Chevalier figures prominently in Morley's "Life of Cobden" as having, along with him, negotiated the commercial treaty between Great Britain and France in 1860. Origin-

ally an advocate of Saint-Simonism, who had suffered imprisonment on its behalf, he was appointed Professor of Political Economy in the Collège de France in 1840, and his enthusiasm for the cause of Free Trade is well known.

Monthly meetings to dine and discuss have been the form of the proceedings of the Society, and these have been held with almost amazing regularity. Even during the events of 1870-71, though the dinners had to be abandoned, the meetings were not. On one occasion only (May 1871) was the meeting abortive, when only three members attended. During the recent war, German nocturnal activities made it desirable that the meetings should be conjoined with luncheon instead of dinner. A glance over the past transactions reveals a great variety and attractiveness in the subjects selected for discussion. There are, indeed, few public questions which may not be examined from an economic standpoint. At present, topics arising out of the war are naturally predominant.

The list of senior presidents includes some distinguished names. Among them may be found that of M. Léon Say (a grandson of J. B. Say). At one time Minister of Finance, he translated Lord Goschen's "Theory of the Foreign Exchanges," and was Senior President of the Society from 1882 to 1893. During his term of office an interesting event was a banquet in honour of Mr Gladstone. It was an enthusiastic function, but a perusal of the proceedings suggests that the distinction of the guests (the French Premier was also present) rather raised the affair out of the domestic circle of the economists. It took place on the 15th of September 1889. Like Cobden, Gladstone replied in French to the toast of his health. He did so in eloquent terms, and was thanked by the French Premier for having pronounced "L'éloge de la France."

Throughout its long career it may be said that the Society has had to struggle against official indifference, if not hostility. A reference has already been made to the second Republic. Napoleon III. regarded the Society with suspicion, and under the third Republic the Protectionist Party has been predominant. Indeed, after 1878, when instruction in political economy received official standing

in the faculties of law, the professorial body formed a group, holding views in marked contrast to those of the majority of the Society. At the same time, it is probably the case that these latter now base their strong leaning towards a Free Trade policy not so much upon *a priori* doctrine as upon an examination of its results in practice as compared with the results of the opposite policy of Protection.

Such an attitude was illustrated at the last meeting of the Society, which was held on 5th October, and at which the writer had the privilege of being present. It was presided over by M. Raphael Georges Levy, member of the Institute and of the French Senate (who at an earlier period of the same day had, on behalf of the latter body, welcomed the delegates from Scotland of the Franco-Scottish Society on their recent visit to Paris). The subject of "The Present Aspects of Protection" was introduced by M. Gustav Schelle, who said that while at the termination of the war the trend of thought was in favour of Free Trade, particular interests had again asserted themselves, and the depreciation of the currency had led to the vicious system of "coefficients." This is the system under which the Government has been authorised to add arbitrary percentages to the tariff rates, owing to the depreciation of the currency and the consequent rise of prices in the home markets. He advocated in the absence of absolute Free Trade at least a return to the system of commercial treaties. The vigour with which the system of "coefficients" was condemned as having led to economic anarchy was perhaps the main feature of the subsequent discussion, in which M. Schelle's views were in the main upheld.

CHAPTER XI

THE LAW OF TRADE UNIONS IN FRANCE

Juridical Review, 1924

The rise of trade unions in France was long hindered by the legislation which abolished the old Mercantile and Trading Guilds. The monopolistic tendencies of these bodies are well known, and some of their activities were closely analogous to those of the modern trade union. Their abolition was part of the policy carried through by Louis XVI.'s reforming Minister Turgot. But Turgot, unsupported as he was, fell, and with him went his reforms. The days of the Guilds were, however, numbered, and from the famous night of the 4th of August 1789, the Constituent Assembly included their reformation among its projects. From that time, they lost their authority and were moribund, being finally extinguished by the Decree of 2nd to 17th March 1791, which also proclaimed the liberty of work and industry.

Another influence against the development of trade unions in France was the distrust felt by the early constitution makers for sectional associations of citizens. This doubt had been expressed by Rousseau. "It is therefore important," he says, "in order to have a correct expression of the general will, that there be no partial society in the State, and that each citizen only gives expression to his own individual opinion." [1] It was only at a date long subsequent to the Revolution that, as will be seen, the right of association was accorded to trade unions, and the development of trade-union law in France discloses an interesting conflict between this right when accorded and the doctrine of freedom of

[1] "Du Contrat Social," book ii., chap. iii.

labour and industry established at the time of the Revolution.

The promulgation of the law of March 1791 was followed by numerous reunions of employers and workmen in Paris and other towns in which they proposed to consider their common interests.[1] The Paris Commune at first authorised them, but later, having found that the workmen (especially those engaged in building) abused the privilege, expressly prohibited the coalitions of workmen. This decision was supported by the Constituent Assembly who, upon the report of Le Chapelier, passed the law of 14th to 17th June 1791. A passage from his report discloses its spirit: "No doubt all citizens should be permitted to assemble, but not the citizens of certain professions for their pretended common interests. There is no longer any corporation within the State, there is only the particular interest of each individual and the general interest. No one is allowed to infuse the citizens with an intermediate interest, to separate them from the general good by a sectional spirit."

The law of 14th to 17th June 1791 accordingly prohibits citizens of the same calling, when they meet, nominating officials, keeping minutes, and settling rules in regard to their "pretended common interests." Should they, against the principles of liberty and of the constitution, deliberate in common and reach conventions tending to a concerted refusal of the help of their industry and work, or to granting it only at a fixed rate, such deliberations and conventions are declared unconstitutional, inconsistent with liberty and the declaration of the rights of man, and of no effect. Those responsible for them are to be fined and deprived for a time of all their active rights as citizens.

A further article deals with threats against employers and workmen, and against those willing to work for a less wage. The authors of the threats are to be fined and imprisoned for three months; and yet another clause directs that any threatening or doing violence to workmen availing themselves of the liberty accorded by the laws of the constitution to work and industry shall be dealt

[1] Paul Pic, "Traité Élémentaire de Législation Industrielle," Paris, 1922, p. 211.

with by the Criminal Authorities as disturbers of the public peace.

If such was the attitude which was adopted by a Government basing itself on the will of the people and engaged in establishing its rights, it may well be believed that many years had to pass before we can trace the beginnings of recognised trade unionism in France. In point of fact, the legislation of the Consulate and of the First Empire favoured the chiefs of industry and commercial magnates, and a bias in favour of employers is disclosed in Articles 414 to 416 of the Penal Code of 1810. While Article 414 is directed against a coalition begun or attempted on the part of employers to lower wages if it is done in an unjust and abusive manner, Article 415 does not repeat this qualification in condemning a corresponding attempt on the part of workmen to raise them. Article 416 refers to workmen only, and subjects to the penalty of imprisonment those who shall pronounce fines, prohibitions, and interdictions, whether against employers or against their fellow-workmen.

The numerous strikes which broke out under the Restoration and the Government of July demonstrated the injustice of this legislation. While sixty coalitions of workmen were annually prosecuted, only eight coalitions of employers were brought on an average before the Courts. At first the Republic of 1848 showed itself favourable to the right of association under all its forms. But after the events of June, these tendencies were modified, and though in 1849 the three Articles of the Penal Code were revised, it was in the direction of dealing with employers and workmen on a more equal footing, while increasing the severity of the provisions. In particular, the words *injustement et abusivement*, referring to employers' coalitions, were deleted.

The report of M. Vatimesnil upon the revision of the law is valuable as drawing attention to the distinction between the expression "coalition" used in these penal provisions, and an association such as we shall see was subsequently admitted by the law. "The very word 'coalition,'" he said, "implies the idea of a reprehensible pact. . . . Whatever legislative provisions may be adopted

in regard to associations of workmen or employers, coalitions can never be tolerated or confounded with them. The association is subjected to legitimate conditions which rule the respective rights of its members. The coalition is an illicit concert between individuals who have no other common interest and no other end but to constrain another's will, to destroy competition, and to establish factitious prices."

As the law now stood, every coalition begun or attempted between employers to lower wages, or between workers to cease work at the same time, to stop work in a factory or regulate hours, was criminal, and the Court of Cassation in 1859 gave a wide interpretation to the word " coalition."

" Whereas," said the Supreme Court, " there is constraint or pressure on employers whenever workmen of one or more establishments, acting as a consequence of previous concert, leave their work together, even after giving proper notice, while demanding modification of the actual conditions of their work whether in regard to remuneration or hours or the task of each day, it matters little that the causes of their demand seem in themselves legitimate, since the law, exclusively concerned to protect the liberty of industry, has punished the coalition independently of its motives."

The law was so wide and in terms so repressive that there was disinclination to appeal to it, and in cases which came before the Courts, it many times occurred that penalties were inflicted of so light a nature as to suggest that the magistrates were not in sympathy with it. It was not, however, till 1864 that the right of peaceful coalition, carrying with it the right to strike, was formally accorded, the provisions of Articles 414 to 416 of the Penal Code being once more revised. The important enactment is embodied in the first of these, and as it still remains in force, and along with the legislation of 1884, to be presently referred to, embraces the existing statute law on the subject of trade unions or *syndicats professionnels*, its terms may be given in full.

" Article 414 (Law of 1st May 1864). There shall be punished with an imprisonment of 6 days to 3 years and with a fine of 16 to 3,000 francs, or with one of these punishments alone, whoever, by means of major or minor

violence, threats or fraudulent manœuvres shall have brought about or maintained attempted to bring about or maintain a concerted cessation of work with the object of forcing the raising or lowering of wages or of infringing the free exercise of freedom of industry or work."

Article 415 confines itself to providing that when the acts penalised in the preceding sections are done as part of a concerted plan, police supervision may be added to the other penalties.

Article 416 deals with employers and workmen who, by means of fines, prohibitions, proscriptions, and interdictions pronounced in consequence of a concerted plan, should infringe the free exercise of industry and work. This section, which made an offence capable of punishment the *mise à l'index*, or boycott, was, as we shall presently see, repealed in the leading Trade Union Statute of 1884.

As appears from the Report upon the Bill of M. Emile Ollivier, the ancient delict of coalition was abolished, while a new one was created—that of infringement of the liberty of work.

To bring a threat within the scope of sec. 414, all that is required is that in pursuance of the intention indicated it be one of an illegal act, capable of making an impression upon the mind of a reasonable individual. M. Emile Ollivier, in the Report referred to, gives us an idea of what would constitute "fraudulent manœuvres."

"Certain workmen," he said, "are working in peace; several of their mates, having resolved to strike, await them at the factory gates; they press them to imitate their example, promise their assistance, descant with exaggeration on the chances of success and the number of their adherents, exalt the justice of their cause; in all those acts, or others analogous, there is the exercise, good or bad, of a right and not the employment of fraudulent manœuvres. On the contrary, an employer wishing to ruin his rival, or political agitators wishing to put on the street on a given day a considerable number of people, bribe workmen to strike together in one or more workshops; or, again, the organisers of a strike to overcome resistance affirm facts which they know to be false; they attribute to the employer

resolutions which he has not taken ; they announce success in a neighbouring town of pretentions analogous to their own, when to their knowledge there has been no such success. Such acts constitute fraudulent manœuvres."

A judicial example of a "fraudulent manœuvre" may be given from a judgment of the First Chamber of the Civil Tribunal of the Seine of 18th June 1903.[1]

A certain firm having dismissed a union workman on account of the insufficiency of his work, all the others left the shop. A poster of the union, headed *Mise à l'Index*, declared that the workmen had left their work to resist the lowering of their wages which the employers wished to impose upon them. In giving judgment the Court said : "In consequence of the defamatory imputations against the complainers and the allegations contrary to truth therein contained, this publication constitutes a fraudulent manœuvre, by means of which the directors and administrators of the union concerned have brought about a concerted cessation of work in the premises of the complainers with the intention of infringing the free exercise of work and of industry, an offence under Article 414 of the Penal Code."

But though the right to strike was now accorded, coalitions and associations of workmen remained without satisfactory status. In particular, the law of 1791 remained unrepealed, and though in the meantime they underwent a certain development, both in Paris and the provinces, under a régime of *tolérance administrative*, it was only in 1884 that they were put upon a more satisfactory legal footing by a statute which began by repealing the "Loi Chapelier" of 1791 and Article 416 of the Penal Code.

This statute (known as the "Loi Waldeck-Rousseau"), as amended in 1920, permits the formation of *Syndicats ou Associations professionnelles*, having for their exclusive object the study and defence of economic, industrial, commercial, and agricultural interests, provided the members belong to the same or similar callings, or to callings dependent upon each other in the fabrication of the ultimate product. Thus

[1] See Yves Guyot, "Les Conflits du Travail et Leur Solution," Paris, 1921, p. 120.

the building trades, including masons, joiners, painters, and so forth, may join together to form one union. On filing their statutes, they are granted a civil personality before the Courts, and may hold property ; but they are not allowed to trade.

An important provision is embodied in Article 7. It provides that every member may at any time withdraw from the union notwithstanding any provision to the contrary, while retaining his rights in any benefit funds to which he has contributed. "There is here," says a French commentator, M. A. Crouzel,[1] "a great difference between the French professional syndicates and the English trade unions." No English trade union is required to separate its strike funds from the funds which it holds as an ordinary benefit society. The pull which this gives a union over any member who, by resigning, will lose all benefit provisions for which he has contributed to the funds of the union is obvious. "Thus," says M. Crouzel, "the English have respected the liberty of the unions to the detriment of that of their members, while our law has sought to safeguard the independence of the members in restricting the liberty of the unions."

The French law, in providing for the retirement of a member, gives the union a right to sue for his current (and by implication past) due subscriptions—a right which is denied under the British statute of 1871.

It may be said that it is in this section that the principles of freedom of labour and of freedom of association meet, and an attempt is made to hold the balance even between them. The Courts endeavour to see that the provision that a workman may withdraw from a union does not, by the action of the unions themselves, become a dead letter. A strike must be for a legitimate purpose recognised by the law, such as a rise in wages, the improvement of working conditions, or the shortening of hours. A strike whose obvious purpose is against non-union labour is contrary to that principle of freedom of labour which finds practical expression in the provision of Article 7. A distinction has,

[1] In "Étude historique, économique et juridique sur les coalitions et les grèves dans l'industrie," Paris, 1887.

however, to be drawn here between criminal and civil remedies ; for, since the abrogation of Article 416 of the Penal Code, it is upon the civil remedy alone that the maintenance of the rights of individual labour depends.

The leading case is that of Joost against the syndicate of fabric printers of Bourgoin-Jallieu, in which, on 22nd June 1892, the Court of Cassation reversed the concurring judgments of the Civil Tribunal of Bourgoin-Jallieu and of the Court of Grenoble. The following are the leading arguments which have been developed in regard to this matter.

On the one hand, it is said that the repeal of Article 416 of the Penal Code, whereby the *mise à l'index* of an employer or fellow-workman is no longer a punishable offence, has, by implication, deprived the party injured of any civil remedy. Article 1382 of the Civil Code, " Every act which causes damage to another obliges him through whose fault it has occurred to make reparation," is interpreted to mean " illegal " act. Consequently, the proscription of an employer or workman appearing no longer in the Penal Code, it is argued that such an act no longer falls under the article referred to of the Civil Code. Again, the Inferior Courts reasoned from the objects which the Legislature sought to attain in 1884. Workmen, unless associated, cannot discuss the conditions of their work on equal terms. It was to consecrate in an indisputable manner the right of coalition that it abrogated Article 416, and its purpose in so doing would have been contradicted had the acts, which it had expressly relieved of penal consequence, still sufficed to bring the union within the scope of civil damages.

On the other hand, it may be said that the purpose for which unions were permitted was the exploitation of their professional interests. The statute of 1884 uses the word " exclusivement " in specifying the study and defence of economic, industrial, commercial, and agricultural interests as the objects permitted. It would need to be shown that these objects were threatened before strike action against recalcitrant workmen could be justified, and such proof might not always be possible. For instance, the action might be based upon petty spite rather than well-considered

trade interest. A much more convincing argument is based on Article 7 of the Act of 1884. It is obvious that if a union, by means of the threat of a strike, could compel an employer to dismiss non-union labour, it had a ready means of defeating the provisions of that article enabling a workman to withdraw from a union when he pleased. This enactment must be judicially supported, and in view of the repeal of Article 416 of the Penal Code, the only means of doing so is to give the proscribed workman a claim to damages against a union for such action as would defeat it. This appears to be the strong ground upon which the decision in favour of the workman of the Court of Cassation rests. Article 7 of the law of 1884 thus becomes the Charter of Liberties of the non-union workman. It puts him in a stronger position than the employer against whom an interdiction has been declared, for it would seem necessary for the latter to show that in carrying out the interdiction of his establishment either one or more of the illegal methods referred to in Article 414 of the Penal Code, "violence, threats, or fraudulent manœuvres," or else some other form of overt illegality (such as defamation), has been resorted to. If such can be shown on the part of a union, an action of damages will lie against it for such an interdiction.

A case which was decided by the Court of Lyons on 15th May 1895 may be cited in illustration of the right of the non-union workman. As a consequence of pressure on the part of the Union of Tapmakers of Lyons, a copper-turner named Burnichon was deprived of work during two years for not joining the union, whose membership embraced 270 out of the 285 working tapmakers who were at Lyons. He raised an action against the union. Nine witnesses were heard. Seven declared that the union by its action had, since the 26th July 1893, prevented Burnichon from finding work. Several added that they had suffered from similar action.

M. Mallet, a manufacturer, declared that he had been disposed to employ Burnichon, but his foreman had told him that in that event all the union workmen would leave. And M. Mallet, who had been boycotted for two years for having refused to dismiss a foreman, had shut his door

on Burnichon. Another employer, M. Blanc, had twice received delegations from the union, who had instructed him not to employ non-union labour.

In finding the union liable to 2,000 francs of damages, the Court called attention to the terms of the Act of 1884, and pointed out that the shutting of the factory doors to non-union labour was not a pursuing of the study of those professional interests which that Act permitted, and that nothing was certainly further removed from the spirit of the legislation of 1884 than to cause to spring again by the new law the tyrannical monopoly of the ancient trade corporations abolished by the Revolution of 1789.

The right which the non-union workman has thus obtained under Article 7 of the Act of 1884 must, however, be administered consistently with freedom of action on the part of the union when it confines itself to what the law recognises as its proper professional interests. Thus a union does not exceed its rights in obliging its members to respect a tariff fixed by collective bargaining, and may, without indemnity, expel a workman who fails to do so. But, in spite of the insistence of the Socialist Party, the French Legislature has declined to grant to trade unions the irresponsibility accorded them by the British statute of 1906. No doubt, it must often be a delicate and difficult task to adjust the respective limits of the principles of freedom of association and freedom of work. But an endeavour has been made to show that in France both principles are recognised by the jurisprudence of the country, and the opinion may be hazarded that both are necessary to the healthy activity of an industrial State.

CHAPTER XII

THE EDINBURGH HOME OF ADAM SMITH

Fifeshire Advertiser, 6th November 1926

One hundred and fifty years have now elapsed since the publication of the "Wealth of Nations." To the historian and the economist the year 1776 is somewhat of an *annus mirabilis*, for it witnessed the Declaration of their Independence by the revolting American Colonies; the fall of Turgot, who, alone among French statesmen, might have led his country in a path which would have avoided the evils of the French Revolution; and the publication of Adam Smith's "Wealth of Nations," the greatest book on its subject which has ever appeared.

To obtain the leisure necessary for its preparation the author had retired to Kirkcaldy, where he lived with his mother and cousin (Miss Jane Douglas) in the house which had been occupied by his father before him. A plan of it, still extant, shows a spacious garden stretching seawards till it reaches a "viewing place" at high-water mark. After the publication of the "Wealth of Nations," Smith obtained a Commissionership of Customs, and it became necessary for him to find an Edinburgh residence. He chose Panmure House, on the north side of the Canongate, a little below the church; and one might almost imagine that in his choice he had been influenced by the recollection of the old home in Kirkcaldy. At least, his new residence had been described in an advertisement of 1753 as pleasantly situated amidst gardens; and if the sea was absent, it commanded an agreeable outlook upon the Calton Hill.

This advertisement is repeated in Chambers' "Minor Traditions of Edinburgh," and from it we learn that at its date the property belonged to the Earl of Panmure, and had lately been occupied by the Countess of Aberdeen. The accommodation included a large dining-room and drawing-room and three very good bedchambers. Inquirers are referred to Mr Shaw, upholsterer, Luckenbooths, for further particulars.

The notice of Panmure House in the "Minor Traditions" describes the advertisement as curious as a memorial of what was considered a first-rate house in Edinburgh in the middle of the eighteenth century. It also characterises the house as a melancholy looking house standing by itself, and speaks of Adam Smith receiving visits "in these dismal halls" from the most distinguished persons who visited Edinburgh. It is doubtful if these epithets were justified. "It wears to this day," says Mr John Rae, Adam Smith's biographer, "an air of spacious and substantial comfort which is entirely wanting in the rest of the neighbourhood"; and he tells us how William Windham, the statesman, who dined in it repeatedly when he was in Edinburgh with Burke in 1785, thought it a very stately house indeed for a philosopher. "House magnificent and place fine," he entered in his diary.

From 1778 until his death in 1790, Panmure House continued to be Smith's home. He brought to his bachelor establishment there his mother and Miss Douglas, and a few months later the youngest son of his cousin, Colonel Douglas, of Strathendry, who was to attend school and college. David Douglas (afterwards Lord Reston) was a school companion of Sir Walter Scott's at the High School, and it is probable that Scott may have been occasionally at Panmure House.

It was conveniently situated for Smith's official duties, for the Custom House was at no great distance in Exchange Square. The long and memorable friendship between Hume and Smith had by this time been severed by Hume's death, and during Smith's residence in Panmure House, his closest associates were Black, the chemist, and Hutton,

the geologist. They were a remarkable trio of bachelors—each pre-eminently distinguished in the science he had made his own. Smith delighted to have these and other friends and visitors about him, and his Sunday suppers were long a tradition in Edinburgh.

Burns called for him in 1787 with a letter of introduction from Mrs Dunlop, but Smith had just left for London. The poet would have appreciated a meeting, for he had a great regard for the writings of " that extraordinary man " and " judicious philosopher," as he, on respective occasions, dubbed him. Not only do we find the " Wealth of Nations " providing Burns, in 1789, with " leisure employment," but he was also acquainted with Smith's other book, " The Theory of the Moral Sentiments," of which, indeed, he possessed a copy. Of the former he wrote, " I could not have given any mere man credit for half the intelligence Mr Smith discloses in his book " ; while a rhyming reference to the latter will be found in his epistle to James Tennant, of Glenconner. Unfortunately, so far as appears, the two men never made each other's acquaintance.

But even in Smith's day it would appear that the surroundings of his residence were becoming undesirable. On 15th July 1789, Samuel Rogers paid his first visit there. His host was found at breakfast eating strawberries. In the course of conversation, he informed Rogers that he was anxious to remove to the new quarters of the town, and had set his heart on George Square. This intention, however, was never carried out.

" The houses, the furniture, the clothing of the rich," wrote Smith, " in a little time become useful to the inferior and middling ranks of people." Though Panmure House still exists, it no longer is occupied by the titled or distinguished. It is in a fair state of preservation, and is now divided into separate houses. Standing back from the line of the Canongate, it has a character of its own, though somewhat spoiled by modern brick buildings which block it on the north. It is understood that it is owned along with these buildings. They are ticketed for sale, and if Panmure House passes with them into the hands of a new

owner, its future may be uncertain. Is it too much to hope that something may be done to secure the existence of a building with such interesting associations, and so connected as it has been with the latter days of one of Scotland's most distinguished sons ?

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